S. Hrg. 101-310

CLEAN CAMPAIGN ACT OF 1989

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

S. 999

TO AMEND THE COMMUNICATIONS ACT OF 1934 REGARDING THE BROADCASTING OF CERTAIN MATERIAL REGARDING CANDIDATES FOR FEDERAL ELECTIVE OFFICE, AND FOR OTHER PURPOSES

JULY 19, 1989

Printed for the use of the Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE
21-944 O WASHINGTON : 1989

5261-72

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ERNEST F. HOLLINGS, South Carolina, *Chairman*

DANIEL K. INOUYE, Hawaii
WENDELL H. FORD, Kentucky
J. JAMES EXON, Nebraska
ALBERT GORE, JR., Tennessee
JOHN D. ROCKEFELLER IV, West Virginia
LLOYD BENTSEN, Texas
JOHN F. KERRY, Massachusetts
JOHN B. BREAUX, Louisiana
RICHARD H. BRYAN, Nevada
CHARLES S. ROBB, Virginia

JOHN C. DANFORTH, Missouri
BOB PACKWOOD, Oregon
LARRY PRESSLER, South Dakota
TED STEVENS, Alaska
ROBERT W. KASTEN, JR., Wisconsin
JOHN McCAIN, Arizona
CONRAD BURNS, Montana
SLADE GORTON, Washington
TRENT LOTT, Mississippi

RALPH B. EVERETT, *Chief Counsel and Staff Director*
WALTER B. McCORMICK, JR., *Minority Chief Counsel and Staff Director*

SUBCOMMITTEE ON COMMUNICATIONS

DANIEL K. INOUYE, Hawaii, *Chairman*

ERNEST F. HOLLINGS, South Carolina
WENDELL H. FORD, Kentucky
ALBERT GORE, JR., Tennessee
J. JAMES EXON, Nebraska
JOHN F. KERRY, Massachusetts
LLOYD BENTSEN, Texas
JOHN B. BREAUX, Louisiana

BOB PACKWOOD, Oregon
LARRY PRESSLER, South Dakota
TED STEVENS, Alaska
JOHN McCAIN, Arizona
CONRAD BURNS, Montana
SLADE GORTON, Washington

CONTENTS

Page

Opening statement by Senator Inouye 1
Opening statement by the Chairman 2
Opening statement by Senator Danforth 2
Opening statement by Senator Pressler 3
Opening statement by Senator Ford 5
Opening statement by Senator McCain 5
Opening statement by Senator Stevens 6
Opening statement by Senator Bryan 7
Text of S. 999 10

LIST OF WITNESSES

Gans, Curtis B., director, Committee for the Study of American Electorate 33
    Prepared statement 38
Graham, Hon. Bob, U.S. Senator from Florida 13
Guggenheim, Charles, president, Guggenheim Productions, Inc 52
    Prepared statement 54
Lynn, Barry, legislative counsel, American Civil Liberties Union 57
    Prepared statement 60
McC. Mathias, Hon. Charles, former U.S. Senator from Maryland 18
    Prepared statement 20
McConnell, Hon. Mitch, U.S. Senator from Kentucky 15
Squier, Bob, Eskew Communications 55
Wertheimer, Fred, president, Common Cause 85
    Prepared statement 87

CLEAN CAMPAIGN ACT OF 1989

WEDNESDAY, JULY 19, 1989

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON COMMUNICATIONS,
Washington, DC.

The subcommittee met at 9:33 a.m. in room 253, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Tom Cohen and Toni Cook, staff counsels; and Gina Keeney, minority staff counsel.

OPENING STATEMENT BY SENATOR INOUYE

Senator INOUYE. Many, both in the Congress and around the country, have been concerned about campaigns for political office, and there is a strongly held view that these campaigns are slick, superficial and often misleading. As a result, the voter does not obtain the information necessary to reach an intelligent decision and cares little for the outcome.

The low voter turnout of the past few elections lends credence to this belief. Congress has been trying for some time to deal with concerns about political campaigns. While the omnibus campaign legislation is dealt with in other committees, the Commerce Committee has jurisdiction over a very vital element, the use of broadcasting stations and certain other commercial media.

As we all know well, the largest percentage of campaign funds are spent on these media. This morning we are here to receive testimony on two measures that address users of the media and political campaigns.

The Chairman of the Committee, Senator Hollings, the ranking member, Senator Danforth, and myself and others have introduced S. 999, the Clean Campaign Act. This bill seeks to increase accountability and balance in campaigns for Federal office by first requiring a candidate, when discussing an opponent, to appear personally in broadcasting advertisements; and second, providing a candidate with free broadcast time to respond to an advertisement opposing him sponsored by an independent party.

The second bill before us is the Political Broadcasting Disclosure Act authored by Senators Bryan and Graham. This bill also focuses on accountability by requiring complete disclosure of the identity of independent parties airing advertisements.

Whenever the Senate discusses campaigns for office, we always have 100 in-house experts. And we are fortunate this morning to have four of these experts appear before this Committee: Senators

Bryan, Graham, McConnell, and Mathias. We are also fortunate to have a distinguished group of experts, political consultants: Charles Guggenheim; Bob Squick, head of a nonprofit group that focuses on elections; Curtis Gans; the president of Common Cause, Fred Wertheimer; and Barry Lynn of the ACLU. And I welcome each and every one of you and look forward to hearing your testimony.

But before we do, I am pleased to call upon my distinguished chairman, Senator Hollings.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. Well, Mr. Chairman, I thank you once again.

Senator Danforth and I are more convinced than ever before. We have been on this for several years now, and the thrust of the bill itself is, if you are going to sling mud, then let the public see the dirty hands. And that way you will get to the overriding public interest of trying to maintain the integrity, and the credibility, and the verity of the public political process itself. That is the idea behind this entire measure.

The disinvestment and cynicism that has come about into the process as a result of the advantage, you might say, of negative campaigning. The networks control the time, and you and I cannot buy five minutes in the evening when the opponent waits until the last minute and then gives you the veritable assault, ambush, deluge. Then you try to explain your vote on the flag in a 30-second spot. You cannot do it. You cannot buy the five minutes. And so what you do is you go negative on your opponent.

And as a result, issues are not being discussed. Information is needed in trying to inform the electorate of popular government matters; they say without popular information is but a prologue to a farce or a tragedy or both.

We have a tragedy on our hands. Less than 50 percent voted last November. And this will not be corrected by any manner or means, but if we can make accountable the candidates in political campaigns, I think we will bring to it a more enlightened discussion of the issues.

I thank you and would yield.

Senator INOUYE. Senator Danforth.

OPENING STATEMENT BY SENATOR DANFORTH

Senator DANFORTH. Mr. Chairman, thank you very much, and thank you for holding a hearing again on this important issue.

Every two years when we finish a political campaign, we tell ourselves well, surely things cannot get worse than this, and then two years later we find that yet again we have plumbed new depths in the netherworld of political campaigns. They are getting worse and worse.

And people say well, this kind of filth is part of American democracy. It is the way things should work.

Well, I think that we are in a whole new era. We have combined negative politics, which have always been part of the electoral system, with the 30-second spot commercial. That is something new, the ability to make charges in 30 seconds or even 10 seconds and the near impossibility of refuting charges in that same short period of time.

This legislation that Senator Hollings and Senator Inouye and I have introduced does not say that we have to stop these negative campaigns. Probably we could not do that if we wanted to constitutionally.

What we are saying is that when these campaigns take place, someone has to assume responsibility for them. No one assumes responsibility if a three-second tag message goes at the end of a commercial saying that this message has been paid for by the Citizens for Blokes committee. That does not tell you anything. What is the Citizens for Blokes committee? And does the candidate stand behind this message, or does the candidate not stand behind this message?

And that is what we are attempting to smoke out with this legislation, to inform the public whether the candidate stands behind the negative campaign. So therefore, it is disclosure legislation. That is really all it is. It is disclosure legislation.

What is wrong with a well-informed public? Why should not information be disclosed to the public, and why should not the public be informed that in point of fact the responsible candidate does have control of his campaign and that he is willing to put his name and his face on the line when this stuff is aired.

We have already reached the conclusion that accountability and knowledge are important in the electoral process. That is why we have reporting of campaign contributions and campaign spending, and that is why we have the tag lines on commercials that exist now. So it seems to me to be a very modest step to say that henceforth, when an opponent is attacked, then the person making the attack has to do it with his own face and with his own voice.

I do not know if this legislation is ever going to be passed, Mr. Chairman, but I am delighted that two of our colleagues are here this morning with their own ideas. And I hope that at the very least, this hearing and this legislation will promote some discussion in the Senate and in the country at large about what we are going to do about the present state of political campaigns.

Senator **Inouye**. Senator Pressler.

OPENING STATEMENT BY SENATOR PRESSLER

Senator **Pressler**. Thank you, Mr. Chairman.

I join in the remarks that have been made. I may join as a cosponsor of this legislation to get it to the floor.

I feel strongly that something must be done about the level of negative campaigning that is occurring in our country. What happens is that some well-funded national group or party sends money to a state party or group and runs negative ads against a candidate. The opposing candidate goes about with a halo on his head saying he disagrees with the negative ads, and the negative ads run. And really, the war of negative ads has reached a point that we must do something.

I co-sponsored legislation almost identical to this in 1985. Certainly the problem has not gone away during the last four years.

Indeed, as my colleague Senator Danforth has said, it has probably gotten worse.

Mr. Chairman, I pride myself on having never run a negative campaign for public office, nor have I ever made or run a negative advertisement. But I do understand the temptations. Negative advertisements are like a narcotic. They often make a greater impact per dollar. They stick in the mind of the viewer. Campaign strategists are wedded to negative advertising. This town is just full of groups and companies that specialize in negative advertisements and making them appear that the candidate running on the other side had nothing to do with them.

Negative advertising is just part of a sequence followed by most of today's successful campaigns. What can be done about it? It is my feeling that telling these interest groups, and parties and subparties, and committees and subcommittees to forgo negative campaigning is about as successful as telling an alcoholic to give up the bottle. And just as the biggest victims of alcoholism are usually the families, so, too, the biggest victims of negative campaigning are usually the voters. When the mud starts slinging, the truth gets obscured fast.

The approach taken by this legislation is imaginative in that it does not prohibit negative advertising; in fact, it never mentions negative advertising. It simply encourages candidates to make comments about their opponents in person, and in effect, it gives the accused the right to be faced by his accuser.

It also eliminates the effectiveness of advertising by Political Action Committees by requiring broadcasters to provide free response time to those ads. I like this approach, but I do have some reservations over the burden this places on broadcasters. So if there is a better way to approach this problem, I would like to hear it; and I am prepared to see changes in the bill or a better approach.

I may cosponsor this legislation to help get it to the floor, to show some support, because I think something must be done. But I would urge broadcasters and others to come forward with their suggestions. I will be asking the broadcasters in my home state of South Dakota how this legislation would affect them, and I am open to any suggestions.

I might conclude, Mr. Chairman, by saying that each year I make it a point to speak to several high school debate clubs in my home state, and I always tell them that the debate they have in high schools is the highest level of political debate they may ever see in the United States. And I say that very sincerely.

I believe that at the high school level you lose points if you bring up irrelevant material in the last speech. If you use unfair tactics, you lose points.

There are no debates like that in politics. Political campaigns have little to do with the real issues. And so I always tell them that probably what they are doing is the clearest, fairest, most issue-oriented debate that exists. Even presidential debates usually are not about the real issues, and that is a sad thing.

This legislation could raise the standard of debate to the real issues; the real economic issues, the real issues that face our country.

Thank you, Mr. Chairman.

Senator **Inouye**. Thank you.

Senator Ford.

OPENING STATEMENT BY SENATOR FORD

Senator **Ford**. Thank you, Mr. Chairman.

I am very pleased that this hearing is going on and very pleased to be a co-sponsor of the legislation.

I agree with my friend, Senator Pressler, that there is some concern as it relates to broadcasters, and if there is a better way to do it, I am perfectly willing to listen.

We find here that we are beginning to move, as it relates to campaigning, on several fronts. Here the Commerce Committee, with its communications jurisdiction, is looking at negative campaigning. There are two types of negative campaigning, individual versus individual, and independent PACs versus individuals.

And I think we need to get into all of that. Several of my colleagues here understand what we are trying to do in the Rules Committee. We are not always on the same wavelength. But we are attempting to get more people registered, to find a method to do that, and we are attempting to find a way to work out regional primaries so that the country may have an opportunity to vote as it relates to the presidential election, rather than let two states, for instance, monopolize.

I think we have a very, very serious problem, and I think we are beginning to see that if we do not settle it, the American people will. And we will be back home watching others who have decided that there is a better way.

I was struck by Senator Hollings' statement that the rich are beginning to take away our right to free speech, because they can buy and we cannot. Therefore, we are unable to speak and to get our message across. And so this is an arena in which we need to develop those with good ideas, with good backgrounds, with strong abilities, so that they may at least have an opportunity to run for office on a somewhat equal basis.

And so I look forward to the testimony this morning, and supporting the efforts that are put forth here by our distinguished committee leadership.

Thank you, Mr. Chairman.

Senator **Inouye**. Thank you.

Senator McCain.

OPENING STATEMENT BY SENATOR McCAIN

Senator **McCain**. Thank you, Mr. Chairman.

I am hesitant to comment on this issue because I do not know of anyone who supports, appreciates, or enjoys a "negative" campaign. And I believe that negative campaigns are harmful, as far as voter participation is concerned, the feeling that the American people have about the people that they do elect, and all of the other platitudes that we will hear from several of the witnesses here this morning.

I would point out that 98 percent of the incumbents that sought re-election in the House of Representatives in the last election were re-elected. The overwhelming majority of members of this body who seek re-election are re-elected.

The advantages that the incumbent have today are enormous. They need to be reined in. Every time that there is an attempt to do so in this body, such as the franking privilege—reduction of that over time—it is rejected overwhelmingly by the members of this body.

I am extremely troubled by a piece of legislation that requires that when a challenger even indirectly refers to his incumbent in an advertisement, he has to do it in person. It seems to me that we will then be faced with a lot of talking head advertisements, which are not exactly stimulating to the voter unless you happen to look like Senator Hollings, which not all of us are gifted to be so.

Senator **Ford**. There is some similarity between you and Hollings, and that is the white hair.

Senator **McCain**. I am afraid that is where it stops.

The job of an incumbent is to run on his record. I have had that obligation on only two occasions. The job of the challenger is to point out how he would do a better job than the incumbent. Therefore, it seems to me he must compare his positions with that of the incumbent.

Now, any reference that is made to an incumbent's voting record then therefore requires the challenger to have his face, and him doing the talking, I think dramatically restricts his ability to wage a campaign. So I think—and I would be interested in hearing from some of the witnesses if that portion of this legislation were enacted into law, whether it would provide a disincentive for the challenger to talk about the record of the incumbent—the record, not anything else—and therefore provide even more advantage to the incumbent.

And frankly, even though I am sitting where I am sitting, I believe that the incumbents have an enormous advantage today and an unfair one. I would hope that some place along the line we would look not only at negative campaigning, but the uneven playing field that exists today which requires a challenger to have access to enormous amounts of money before he ever is on that level playing field.

It seems to me if there is a requirement that any allegation or any reference made to an opponent's voting record, has to be done by the candidate himself or herself; it is a very restrictive practice and one that I think we should examine very carefully.

Thank you, Mr. Chairman.

Senator **Inouye**. Thank you.

Senator Stevens.

OPENING STATEMENT BY SENATOR STEVENS

Senator **Stevens**. I hesitate to even comment after all of that. I have heard from all of you, but, I mean, Mr. Chairman, I am not going to be able to stay very long because of conflicts. I do not know how you all find the time to do this with these hordes of people that are coming in here now.

But I do want you to know that—I think Senator Ford has mentioned it—we ought to have one comprehensive bill instead of a series of bills dealing with campaign reform. I am inclined to believe that incumbents do have an overwhelming protection today under the system, and we have an obligation to try and see if we can level the playing field.

I am struck with what Mr. Guggenheim is saying here this morning about these 30-second ads. I really believe that perhaps the problem we are dealing with is the 20- and 30-second ads rather than the negative campaigning. The hit- and-run ad is still hit-and-run, but I am not sure that it is going to be solved by the proposals here today.

I do hope that my good friend, the former chairman who is here, will listen as well as give us his point of view, because he is again addressing Federal financing. And that, too, is one of the issues that is before us, and it again gets me back to my original point, that we ought to face this proposition in one bill and try to work out one campaign reform bill this year. And I am afraid that if it contains Federal financing, this Senator is not going to support it.

Senator INOUYE. Now we will hear from those who have spent much time on this legislation. I would like to first call upon the former Governor of the State of Nevada and presently one of our most distinguished members, Senator Richard Bryan.

OPENING STATEMENT BY SENATOR BRYAN

Senator BRYAN. Thank you very much, Mr. Chairman. I would like to compliment you on holding this hearing and your support of the legislation, and to full Chairman Senator Hollings and to Senator Danforth for their bipartisan leadership. I think by working together we can truly effect a meaningful campaign reform.

Clearly the time, in my judgment, for action is now, and I believe that we can make a meaningful difference by pursuing the legislation, which I am pleased to endorse, that is before us today—the Hollings-Danforth Clean Campaign Act.

What can be more accountable, responsible, honest and fair than saying to your candidate, if your campaign wants to talk about your opponent, then do it yourself. Put your face on television. Put your voice on radio. Stand behind what your campaign says.

Let me now turn to a piece of legislation that my distinguished colleague and friend, Senator Bob Graham and I, introduced yesterday, and that is the Political Broadcasting Act.

Early yesterday morning Senator Graham and I were talking about how we would handle our joint appearance here this morning and he suggested to me that I illustrate the problem and he would come up with the solution. I found that to be frequently the situation since I have come to Washington.

But there is a fact and there is a problem and we can start addressing it in a fairly easy way. I am fresh from the campaign experience of 1988, and while I enjoyed that campaign, I must say that I do not believe it was the finest hour for America's electoral system.

I realize that I now speak with the voice of an incumbent, but I remain convinced that the first step toward better elections is somehow imposing spending limitations. I realize that that is an issue fraught with constitutional problems and it will be the subject of protracted debate. Unfortunately, the President's recent plan did not include any such spending limitations.

While we may debate the constitutional approach necessary, or the merit of such spending limitations, we can push forward in a number of areas and I would like to talk about one of those this morning.

Aside from the overall spending limits, the biggest gap in campaign election rules is in the area of independent campaigns, usually campaigns monitored by an outside organization which believes the best way to influence voters is to spend huge amounts of money very quickly before the public realizes what has hit them.

It is my concern that independent campaigns are the wave of the future. Independent campaigns allow organizations to bypass the normal spending limits of $5,000 per election for a political action committee and instead pour in large sums of money, in some instance more than a half a million dollars, into individual races.

We must do what we can to legally reduce their influence, or at least let the voter know who they are, what they stand for, who is paying for those campaign ads. As an example, the Automobile Dealers and Drivers for Free Trade, an organization representing the imported vehicle market, in 1988 this organization spent in five Senate and two House campaigns almost $1.5 million.

Now, note that we are talking about the independent campaign spending, which is in addition to the dollars which are permitted through the PAC contribution route. The independent campaign money was used primarily on very negative, often misleading campaign strategies—television advertising, primarily—and on issues that had absolutely nothing to do with the question of free trade.

In my state, the Automobile Dealers for Free Trade spent more than a half a million dollars in an independent campaign directed against my candidacy. Ours is a state with just a little over a million people, and I can tell you that more than a half a million dollars makes an impact in that kind of a campaign.

The bulk of the half a million dollars was spent in the last ten days of the campaign on negative television advertising. The issue they discussed was not free trade but Social Security.

In fact, in all their independent campaigns the Automobile Dealers for Free Trade never mentioned the issue of trade in any way, shape or form. I can only assume that by adopting that strategy they felt that they could not prevail by espousing the policies that that organization represented.

In the last ten days of that campaign, my frustrated supporters began calling and saying, why do we not see more of your television ads on the campaign? All we are seeing are the campaign commercials of the other fellow.

The television advertising was running roughly about four to one in terms of frequency of spots and television stations initially refused to sell us additional time. Their response is, we are providing to each of the campaigns an equal amount, excluding from that calculation the independent campaign expenditures of approximately half a million dollars spent by the Auto Dealers for Free Trade.

In addition, the people of Nevada had absolutely no idea whose television commercials were being paid for. They believed that they were campaign commercials run by my opponent. Although there is a disclosure at the very bottom, I would respectfully submit it takes someone with extraordinary vision to be able to read the disclosure that appears on the bottom of that television introduction, so the public had little opportunity to understand who was sponsoring the commercials.

Ironically, at the same time these independent expenditures were running on my opponent's behalf, the local imported automobile dealers were supporting my candidacy through direct political participation. Independent campaigns feature no spending limits, few disclosure requirements, no equal time provisions, little or no accountability to voters, and unless we slow that down this in my opinion will be the wave of the future in influencing elections.

Our legislation today does not address all of the problems of independent campaigns, but it does offer a start. Right now when a voter sees a television commercial or hears a radio ad, he or she has little chance of realizing who paid for that ad or the views of the organization that may be sponsoring them.

Disclosures on television advertising, the most impressive and persuasive medium available, are in small print flashed briefly on the screen at the end of the commercial. The voters are entitled to better.

I believe that the two bills being discussed today can improve the election process, will help to make campaigns more accountable to the voters, and will make campaigns less negative—a goal that we should all endorse.

Thank you very much, Mr. Chairman, and now I would like to, if it is appropriate, turn it over to my distinguished colleague Senator Graham.

[The bill follows:]

101st CONGRESS
1st Session

S. 999

To amend the Communications Act of 1934 regarding the broadcasting of certain material regarding candidates for Federal elective office, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 16 (legislative day, JANUARY 3), 1989

Mr. HOLLINGS (for himself, Mr. DANFORTH, Mr. INOUYE, and Mr. BRYAN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To amend the Communications Act of 1934 regarding the broadcasting of certain material regarding candidates for Federal elective office, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Clean Campaign Act of 1989".

SEC. 2. (a) Section 315 of the Communications Act of 1934 (47 U.S.C. 315) is amended—

(1) by redesignating subsections (b), (c), and (d) as subsections (d), (e), and (f), respectively; and

(2) by inserting immediately after subsection (a) the following new subsections:

"(b)(1) If any legally qualified candidate for any Federal elective office (or an authorized committee of any such candidate) who utilizes rights of access and conditions of access under the provisions of this Act uses a broadcasting station to refer, directly or indirectly, to another legally qualified candidate for that office, such reference shall be made in person by such legally qualified candidate.

"(2) If any licensee permits a broadcasting station to be used in a manner not in accordance with the requirements of paragraph (1) of this subsection, such licensee shall provide, within a reasonable period of time, to the candidate to whom reference was made the opportunity to use, without charge, the same amount of time on such broadcasting station, during the same period of the day, as was used by the legally qualified candidate (or by an authorized committee of such legally qualified candidate).

"(c)(1) If any licensee permits a person to use a broadcasting station to broadcast material which either endorses a legally qualified candidate for any Federal elective office or opposes a legally qualified candidate for that office, such licensee shall, within a reasonable period of time, provide to any legally qualified candidate opposing the candidate endorsed (or to an authorized committee of such legally qualified candidate), or to any legally qualified candidate who was so opposed (or to an authorized committee of such legally qualified candidate), the opportunity to use, without charge, the same amount of time on such broadcasting station, during the same period of the day, as was used by such person.

"(2) For purposes of this subsection, the term 'person' includes an individual, partnership, committee, association, corporation, or any other organization or group of persons, but such term does not include a legally qualified candidate for any Federal elective office or an authorized committee of any such candidate.".

(b) Section 315(a) of the Communications Act of 1934 (47 U.S.C. 315(a)) is amended by striking "section" and inserting in lieu thereof "subsection".

(c) Section 315(e) of the Communications Act of 1934, as so redesignated by subsection (a) of this section, is amended—

(1) by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively; and

(2) by inserting immediately after "section—" the following new paragraph:

"(1) the term 'authorized committee' means, with respect to any candidate for nomination for election, or election, to any Federal elective office, any committee, club, association, or other group of persons which receives contributions or makes expenditures during a calendar year in an aggregate amount exceeding $1,000 and which is authorized by such candidate to accept contributions or make expenditures on behalf of such candidate to further the nomination or election of such candidate;".

SEC. 3. If any provision of this Act or the application of it to any person or circumstance is held invalid, the remainder of this Act and the application of the provision to any other person or circumstance shall not be affected by such invalidation.

○

Senator INOUYE. Now it is my pleasure to call upon the former distinguished Governor of Florida and now our distinguished colleague, Senator Graham.

STATEMENT OF HON. BOB GRAHAM, U.S. SENATOR FROM FLORIDA

Senator GRAHAM. Thank you, Mr. Chairman and distinguished members of this Subcommittee. I, too, appreciate the opportunity to talk about the legislation that Senator Bryan and I have introduced in the context of the need for broad campaign reform.

I recognize that the issue that we are raising is but one of the range of issues which a comprehensive approach to campaign reform would include. I share the opinion of our colleague from Alaska that the preferred course of action would be a comprehensive campaign reform piece of legislation. We have tried that for the whole period that I have been in the United States Senate, with no discernible result.

Therefore, I believe that we might look at a strategy which identifies some of the major individual defects within the system and attempt to deal with them on an individual basis, with reduced aspirations in terms of comprehensive reform.

Mr. Chairman, one of the reasons why I believe that this legislation deserves special attention is because I believe the political action committees are about to be given an IQ test, and the IQ test will be whether you terminate your previous practice of contributing to individual candidates within the limits prescribed by the law and move towards independent expenditures targeted at a few key races.

If you stay with the past pattern, you fail. If you move to the independent expenditure level you pass an intelligence test. I believe that this clearly is the wave, and a very dangerous wave, of the future.

The independent expenditure has been given some special provisions by both law and Supreme Court opinion. Those special considerations which particularly allow unlimited expenditures are based on a concept of free speech, that a group which uses the process of a political campaign should be allowed to, without limit, express its own particular political point of view.

That is a laudable, constitutionally-protected basic right within our Bill of Rights. The reality is, however, that these independent expenditures, as Senator Bryan has indicated, are not being used to carry out the purpose for which they are given this protective status.

The groups that are spending the unlimited amount of money are not using them to advance the free speech upon which their group has generated the funds; a group whose purpose is to argue against protectionism and in favor of free trade spends money running ads on Social Security or other unrelated topics.

There also is the serious question of the separation of the independent campaign from the normal, mainstream campaign of the candidate itself. As Senator Bryan has pointed out, in his case the circumstance was such that the average voter would have no way to draw the line between what the candidate was putting on the air and what the independent political action committee was paying to put on the air.

So Mr. Chairman, to sum up the problem posed by these negative independent ads, it is next to impossible for the viewing public, the voters, to determine who is paying for what is in these commercials, and what is in these commercials does not relate to the issue upon which the independent group has based its rationale.

The current disclaimer requirements are not adequate, as evidenced by the confusion caused by these independent ads as they were run across the country in recent campaigns.

Our legislation is aimed at remedying this problem. Senator Bryan and I have proposed through the Political Broadcasting Disclosure Act to upgrade the disclaimer requirements so that the country has a clear understanding of who is sponsoring these political messages. We consider our legislation to be pro-viewer, pro-voter. It promotes clarity.

Here is how our idea would work. We would require a clear and readable disclaimer which would be printed and would appear continuously on television ads. Furthermore, a voice disclaimer would be required to describe the identity of the group paying for the message.

This disclosure rule could be satisfied by a disclaimer such as this: "This message was paid for by the Foreign Auto Dealers Political Action Committee which supports free trade. This message was not sponsored by the candidate's committee." Voice disclosures would also be required on radio advertisements.

Mr. Chairman, let me take just a minute to describe what this bill does not do. First, this legislation does not limit the right of political action committees to express themselves via independent expenditures. It does not tell political action committees what to say or how to say it.

This legislation respects the First Amendment. It does not erode free speech. Our goal is not to eliminate political activity outside of campaigns. Our goal is to let the public know the players, whether they represent domestic or foreign interests.

Restoration of public trust in our elections is a key reason we must reform campaign financing. Bringing independent expenditure ads out of the shadows would certainly help.

Thank you, Mr. Chairman.

Senator INOUYE. Thank you very much. Now, I am pleased to call upon my colleague from Kentucky, the former county judge executive, Senator McConnell.

STATEMENT OF HON. MITCH McCONNELL, U.S. SENATOR FROM KENTUCKY

Senator MCCONNELL. Thank you, Mr. Chairman. I appreciate the opportunity to be here this morning.

I was listening with interest to my colleagues, Senator Bryan and Senator Graham, talk about independent expenditures and disclosure. There are a lot of us who are concerned about soft money expenditures and disclosure.

One of the favorite activities of labor unions, for example, is to operate telephone banks out of Detroit, calling into various states and campaigns around the country, to talk about Social Security as well, and of course there is no disclosure of those expenditures and no warning to the caller receiving the call as to what the subject matter will be, and as to whether or not it is an organized telephone effort.

So this whole business of disclosure, whether it is of independent expenditures or soft money, is certainly an important topic. I would say it argues in favor of what my colleague Ted Stevens indicated, which is that we probably ought to try—even though we have had difficulty—to deal with campaign finance on a comprehensive basis.

The practical effect, it seems to me, of the legislation of Senator Danforth and Senator Hollings, would be to make the life of all of us in this room who are elected officials considerably easier. I, for one, can certainly live with it happily.

I think it would make it much easier for incumbents, as Senator McCain pointed out, to sail through a campaign relatively unscathed, because it would simply require the challenger to launch his attack in the least effective way.

Most people who use television advertising try to do it as effectively as possible. This legislation would make certain that the launch of the attack by the unknown challenger was rather boring and probably not listened to by the voters.

With regard to independent expenditures, again not directly the subject of this legislation except that there would be some time allowed if the provisions were violated, I do not think any of us like independent expenditures. I certainly do not.

Fortunately, they almost never work. Senator Bryan is here despite an independent expenditure campaign against him. Senator

Nickles came back in 1986, despite over $500,000 in independent expenditures against him by the realtors. Senator Conrad Burns made it here last year, in spite of a quarter of a million dollars in independent expenditures spent against him, and I remember when the AMA launched an attack against Congressman Stark. That did not work either.

So even though we do not like it—and I fully expect, in my case for example, to have large independent expenditures against me by the trial lawyers because they do not like my advocacy of tort reform—most of us have survived these kinds of attacks and we need to be very, very careful about going down this path.

Now, specifically, Mr. Chairman, with reference to the legislation of Senator Danforth and Senator Hollings, Supreme Court Justice William Brennan said it best when he stated that the First Amendment gives speech the right to be "uninhibited, robust and wide open."

Political advertising in this country certainly is in most instances "uninhibited, robust and wide open." It has always been, as far back as when Grover Cleveland, who had fathered an illegitimate son, was taunted with the slogan, "Ma, Ma, where's my Pa? Gone to the White House, ha, ha, ha." Hardly a meaningful discourse on the important issues of the day in that particular election.

However, regardless of whether a political ad is meaningful or just plain mean, it is entitled to the full protection of the First Amendment. That means no content control, whether by direct means or through the back door.

The bill before this subcommittee, the Clean Campaign Act, reverses Justice Brennan's formula. Its clear purpose is to inhibit political speech, to restrict the methods of presenting ideas and to deter outside groups from speaking their mind on important public issues, and I might say again parenthetically, all of this would be to the substantial benefit of all of us incumbents.

Professor Laurence Tribe, a respected constitutional scholar from Harvard Law School, has provided to my office his views on this legislation and I would like to quote from him. Professor Tribe, as we all know, never has been accused of being an arch conservative, but neither does he believe that freedom of speech has no bounds.

Yesterday he was explaining to the House Judiciary Committee that flag-burning was not necessarily protected by the First Amendment. But on this legislation, Professor Tribe's feelings are clear.

He has said:

> The Clean Campaign Act poses two constitutional problems. First, it puts a constraint on speech as a condition of receiving a benefit provided by law—the broadcast discount. The Supreme Court has said explicitly that the Federal Government cannot condition the receipt of valuable benefits upon rules that serve to limit speech.
>
> In *FCC* v. *The League of Women Voters*, the court invalidated a portion of the Public Broadcasting Act which denied public funding for projects that were political in nature.
>
> The second constitutional problem posed by this bill is that the "in person" requirement imposed on ads mentioning a candidate's opponent is a substantive control upon the content of political advertisements.
>
> Certainly it would be impermissible to say that a candidate may make only polite references to his opponent in a political ad. However, there is no fundamental dif-

> ference between this constraint and a requirement that candidates show their faces when talking about their opponents.
>
> In the case of *Talley* v. *California*, the Supreme Court struck down a law requiring identification on all political leaflets of those responsible for disseminating such material. The court held that such a requirement would tend to suppress unpopular views.
>
> The "in person" requirement imposed by the so-called "Clean Campaign Act" would have the same effect and therefore poses serious constitutional problems.

That is what Laurence Tribe had to say about this bill. Before I go on further, however, I would like to discuss the case he mentioned, *Talley* v. *California*. This case was decided in 1960, back when the civil rights movement was still in its infancy.

Talley was convicted of violating an ordinance requiring all leaflets to bear the names and addresses of everyone responsible for making and disseminating the leaflet. In essence, it required "talking head" leaflets. Talley's leaflet urged a boycott of companies that practice discrimination against blacks, Mexicans and Asians. It also said that everyone should have "an equal opportunity for employment, no matter what their race, religion or place of birth".

We would all agree with those views today, but in 1960 they were dangerous words to speak. The cloak of anonymity was the only defense that many early civil rights workers had. The Supreme Court threw out Talley's conviction, arguing that anonymous pamphlets, leaflets and even books have played an important role in the progress of mankind.

To that list, we ought to add anonymous broadcasts. The court pointed to the "obnoxious press licensing law of England, enforced because exposure of the names of printers would lessen the circulation of literature critical of the government".

The court concluded by noting that "even the Federalist papers, written in favor of the adoption of our Constitution, were published under fictitious names." There is no question that the effect, if not the intention, of the "in person" requirement contained in this bill would be to discourage frank and critical discussion of political candidates and issues.

There is also no doubt that such a requirement would severely blunt the effectiveness of many ads. Consider, for example, the famous "atomic bomb" ad used successfully against Barry Goldwater by former President Johnson. Many criticized that ad for being sensational or even untrue, but no one argued that such an ad was beyond the protection of the First Amendment, or that the government could regulate how a candidate's views on nuclear war could be presented.

The Clean Campaign Act does in fact regulate how candidates express their views and discuss their opponents. As Professor Richard Briffault of the Columbia Law School puts it, "The Clean Campaign Act looks like an attempt to dictate the content of political ads and to tell candidates how they may or may not present their views. With regard to the provision on independent expenditures, the bill essentially is trying to discourage this form of private, political speech."

Certainly, you run some risk by allowing speech to be uninhibited, robust and wide open. At times, feelings will be bruised, traditions will be broken, and the truth will be stretched.

Two months ago, the Chinese Government decided that it could not bear the strain of speech that was uninhibited, robust and wide open. It felt that the makeshift Statue of Liberty in Tiananmen Square was an intolerable "negative ad" against the present government; so it brutally suppressed the political speech of those Chinese students.

Fortunately, in this country we have a long tradition of giving speech the widest latitude of freedom, particularly speech that is political in nature. The bill before this Subcommittee today would violate that tradition by putting new regulations on political speech in a way that almost certainly will affect the content of that speech and cut back on the freedom that the First Amendment was designed to provide.

The legal authorities I have quoted say that this bill poses constitutional problems. I would take that one step further and argue that the bill would be found to be unconstitutional, and with the great respect that I have for my friends who are the sponsors of this legislation, I would urge them to reconsider.

Let me just say in closing, I repeat that I think all of us who are presently here in the Senate would benefit substantially from this legislation. I think it would, as Senator McCain alluded to earlier, make it extremely difficult to launch an effective attack against any incumbent, but I really think that this is a step in the wrong direction.

I am not highly exercised about it. My friend Jack Danforth and I have discussed this a few times. But I think that it is not likely to withstand a court test and I really wonder if we need to go this far.

Mr. Chairman, I appreciate very much the opportunity to be here.

Senator INOUYE. Thank you very much, Senator. Now, it is my great privilege and honor to call upon the former chairman of the Senate Committee on Rules and Administration, one of the most beloved of our former colleagues, Senator Mathias.

STATEMENT OF HON. CHARLES McC. MATHIAS, FORMER U.S. SENATOR FROM MARYLAND

Senator MATHIAS. Mr. Chairman, I appreciate that introduction. I do agree with much that has been said this morning about the unfortunate affect of negative campaigning on the American political system. It has always been present as has been testified here this morning.

Because of the power of television and the power of the electronic media, it has a new degree of virulence and a new force and affect that it did not have in the days when we were dependent on a few country newspapers to carry the word. So we are dealing with something of a new phenomena, it seems to me.

But I also agree with my friend, Senator Ford, that it is going to be very hard to achieve any kind of meaningful solution without some comprehensive election legislation. It really has to be brought together in a comprehensive way. The thrust of these proposals that are before the committee today are really twofold.

One is to provide equal time to the victim of an attack. And the second is to require the correct attribution of the source of that attack. Both of these require subjective judgments that are not required by the election laws today. And in the process of requiring those subjective judgments, constitutional questions arise.

The current equal-time provision is very simple. It requires only an objective test. If Senator Hollings gets 15 minutes television time, then his opponent has to be offered 15 minutes television time. There cannot be much argument about that. But if you are going to give it to the victim of an attack, somebody has to decide whether there has been an attack.

And the wordsmiths in our society would be very clever in developing means of attacking in subtle ways—that you would have to decide—like the old story of the fellow who had his head sliced with a razor and when he said "you missed me" and the assailant said, "just wait til you nod."

There would have to be some organization set up to decide what was an attack. What justified giving this equal time. And that means that you are having some sort of a government board or some sort of an authority organized by the government to make these judgments about the content of political ads. And that gets you into trouble.

Administration would also be somewhat thorny. I think it is not insuperable, but it would be a problem.

On the question of attribution, I think it is enough to say that there is no way that you could constrain third parties. And I do not know that it is going to be particularly effective to run a little trailer at the bottom of an ad to say, this was not paid for by Ted Stevens, or it is not paid for by the committee. It is going to be paid for by some committee and that is really done today in every case that I know of.

There is, however, an answer to this problem. It will not be universally popular as the distinguished senator from Alaska has already suggested. But it is an answer that is an important answer and that is public financing, we really have to look at very seriously in this country.

It is suggested, at least by implication by the Supreme Court in the *Buckley-Vallejo* case. As Senator McConnell said a minute ago, it is perfectly clear that Congress cannot restrain first amendment rights. You cannot manhandle the constitutional rights of candidates and of the electorate, because both are at stake.

However, as the court implied, you can condition the receipt of public funds on the acceptance of some reasonable regulation. And I think therein lies the opportunity for some meaningful restraint on the practice of negative campaigning.

Now that is not the only reason that I would recommend public financing. And I do not want to go into all of the reasons at the moment except just to say, Mr. Chairman, that from 1984 or from 1964 to 1984, election costs in this country rose by a factor of 10. The election cost ten times as much in 1984 as it cost in 1964. $180 million in 1964, $1.8 billion in 1984.

And if you apply an inflation factor to that it reduces it a little bit. It means the cost of elections quadrupled in that period of time, but that is serious. If you couple that with the fact that in the same period of time election participation generally declined it is still more serious. The more money we spent, the less people voted.

So for many reasons, I think the time to look at public financing has come. It addresses directly the question that Senator Hollings and Senator Danforth have presented to this committee.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF CHARLES McC. MATHIAS

The sponsors of this legislation are to be thanked for grappling with the thorny problem of negative campaigns which are lowering the standards of conduct in American elections. It is not an easy subject and it will require serious consideration, notwithstanding constitutional authority to regulate federal elections.

The two basic provisions are to provide equal time for a candidate who is attacked and to require candidates to comment in person on the qualifications of opponents.

The first proposal is more complicated than the current equal time requirement which can be enforced by an objective test. As proposed, a subjective test would be necessary to determine whether a broadcast statement were positive, negative or neutral. This test would undoubtedly be applied by some government agency or official to determine the nature or content of the statement, thereby raising a host of First Amendment problems. This would also provide administrative difficulties, but they are probably not insuperable and the committee should provide sound guidelines for enforcement.

The second proposal also requires subjective judgment to avoid being embroiled in serious constitutional objectives. To require a candidate's critical statements about an opponent to be broadcast in person can not have the effect of denying freedom of expression to anyone else, including a spouse, a sibling or even a campaign worker. Only a direct quotation would seem to be prohibited and that is unlikely to be offered. It restricts a candidate's ability to communicate with the public in the way that seems desirable. It is more intrusive than regulation of commercial advertising.

I suggest an amendment to this legislation to provide for public financing of federal election campaigns. That would not ease the administrative burdens of enforcing the first proposal, but it would greatly relieve the constitutional issues. A candidate who accepted campaign funding could be required to accept reasonable regulation. If full constitutional freedom of expression to conduct negative campaigning were preferred the funds could be rejected.

It is my opinion that without inclusion of public financing this legislation would have little impact. There are serious constitutional questions that must be recognized and resolved or else they will prove to be formidable obstacles.

Senator **INOUYE**. Thank you very much.

I just have one question. I gather that there are many who object to the talking-head requirement. As chairman of this committee I have spent many hours before the tube and as a result I have seen all kinds of shows and I note that in recent months whenever there is a movie with violence or sex, there is a full screen warning. It says parents should be warned that scenes in the following movie may be a bit too violent for young children.

What if we had the same type of requirement before an ad goes on? A full screen disclosure. This ad has been paid for by certain certain PAC or what have you, and approved or disapproved by the candidate?

Senator **GRAHAM**. Mr. Chairman, in the context of the independent political action expenditures, that probably would be violative of one of the standards that the Court used.

Senator **INOUYE**. Well, the independent organization can say, and not approved by.

Senator **GRAHAM**. You would have to clearly indicate that there was that separation or one of the pillars under which the independent expenditures support it would be collapsed.

Senator INOUYE. Would that type of disclosure help the situation?

Senator BRYAN. Mr. Chairman, I think that it would pretty clearly if you take a look at what has been run in recent campaigns, it is virtually indecipherable as to who is running the ad. I mean, you can look and even now as we are fully aware of the situation, if you saw a rebroadcast of the television of the 1988 campaign season, it is almost impossible, unless you are right up to the screen to see who it is.

So, clearly, that type of thing would charge the public with notice that this is something that is separate and apart from the campaign. I think that would be helpful.

Senator MCCONNELL. Mr. Chairman, could I just make one quick observation. I do not know whether the disclaimer would be more likely seen at the beginning or the end. There may have been some research on that that you are familiar with.

Senator INOUYE. I can assure you if it is a full-screen disclosure, black and white.

Senator MCCONNELL. I recall in one campaign that I ran, we, in a series of ads did put the disclaimer at the beginning because we felt that they would be less likely to pay a lot of attention to the disclaimer at the beginning of the ad than the end. And so I do not know whether people would be more likely to focus on it. But if it were a full screen and at the beginning—I suppose you are correct. I really have no idea.

Senator INOUYE. Senator Hollings.

The CHAIRMAN. Thank you very much, Mr. Chairman, and let me welcome our colleagues and, particularly, our former colleague, Senator Mathias. Mac, it is good to see you again, and know that your interest continues in maintaining the integrity of the process. It really emphasizes one mistaken idea about the comprehensive approach.

I have been in government a little while and we are still trying to solve education problems. We are still trying to solve budget problems.

I would like to move comprehensively towards technology and research. Every problem is better approached in a comprehensive fashion. The truth of the matter is, we have tried to accomplish this. You and I had debated this issue back in 1973 when we passed a Federal Election Campaign Act. Right to the point, on public finance, which you testified—you can see the difference there but we could not get it to a vote. There were seven filibusters.

There are very strong feelings about financing and public financing. I urge the Committee to move on this legislation S. 1009; instead of waiting for a comprehensive approach. We have tried that. We cannot get through financing; we cannot get through Clean Campaign. We cannot get through anything.

But if we can get at least a man of good will on both sides, and this is a bipartisan bill, then we can at least achieve part of our goal. As we gradually move forward to cleaning up campaigns, on the one hand, we establish the integrity of the process itself.

Now, the second point is that, Senator Danforth and I in drafting S. 1009 very clearly put in that this legilation applies when you refer to a candidate directly or indirectly. You could be King Solomon and never decide when or not you are being attacked.

Let me, and I know Senator McCain knows I have the highest respect for him, dispel one myth, or as we say down home, John, bail this buzzard of incumbency.

Look at that panel, Mr. Chairman, look at the three of them out there. They all beat incumbents—of the 435—and watch them smiling, particularly McConnell. That is a nice smile on his face.

Since 1980 the 435 House members—56 percent have been replaced. They are all new faces. The majority in this decade, and we are not through with the decade; 44 percent of you senators, or us senators have been replaced. We had, over on the House side, distinguished senators, 12 incumbents withdraw. Not offer for reelection as House members. Twelve Democrats that I know of. And Democrats succeeded them in their districts 11 to 1.

That was not the incumbency; it is the electorate, it is the reflection of the people and their feel in that particular district.

Get off of this incumbency nonsense. I have been in public office for 40 years. I have gotten elected 20 years without one of these media consultants. And I have been elected with them for the next 20 years. And one lesson they tried to teach me immediately which is hard to learn, is when asked what I am going to do about something—Oh, Senator, do not ever tell them what you are going to do, just say you are concerned.

Look at all of these measures that I have to vote on as an incumbent. Whether it is child care or the environment or abortion, or gun control, or go right down the list of all of these knotty problems that you and I are having to vote on.

The incumbent is at a disadvantage. I have got thousands of votes to defend. And the challenger with his media consultant has drummed in his head—do not ever give a solution. Once you say what you are going to do, you divide voters. And your game in this 30-second or 20-second bite that you are going to put on the 7:00 o'clock news is to say I am concerned about child care.

Abortion is a very important problem. It is an individual concern, and yet we must maintain the integrity of life and I am very much concerned about it. What have I said? Am I for an abortion bill or not? Oh no, I did not say that. I do not make that mistake.

Do not give me this incumbency argument. You folks are the best example of beating an incumbent.

And, in fact, Senator Graham, let me tell you, categorically, you spent less money than the incumbent and we spent a good—and I think, Mac, you were here—10 percent of our time for Paula Hawkins. I do not know whether it was a social security bill or whatever bill it was. The leadership would take it over and wait for Paula to get there and Paula to make the speech and Paula to make the motion. And I really got worn out over that process.

So we did do the best we could for incumbents, and yet you are here having spent less money. So I hope we can dispel that incumbency nonsense once and for all.

Now, with respect to the challengers having a right to challenge—and I will go right to what you said, Senator McConnell. But like Oliver Wendell Holmes—said, we should have robust and wide open discussions—that is exactly what we are trying to do. Open, wide open. Make each candidate accountable.

The First Amendment is to protect the freedom of speech of the individual speaking, not the person hidden in the curtains over to the side, unidentifiable, and unopen, secured and obscured.

I am trying to do just exactly what Oliver Wendell Holmes said on the First Amendment here. We are looking at or restricting content. Do not give me this leaflet case. You can print a leaflet and put it out anywhere you want. But you cannot on broadcast because you cannot build another station here in Washington. You cannot even get a broadcast license for television in the state of Delaware. The spectrum is scarce and controlled.

Moreover, Article I, Section 4 of the constitution preceding the First Amendment, Senator Mathias, Article I, Section 4 says, "The Congress shall regulate the time, place and the words and manner, m-a-n-n-e-r of elections."

Section 317 of the Communications Act of 1934 requires that when you buy commercial time on broadcast stations, the station must say that the time is bought and who bought it. 'And that pertains to political or commercial advertising as well. And that is the law. And tell Larry Tribe that has been upheld by court after court and he knows it. He knows it.

So what we are doing here is complying with the law as it applies now to people.

We know what is going on. We are trying to get accountability.

Now, your dogs—I had to buy dogs down here in the 1986 race. I had them ready because, I agree, it was the most effective, dramatic, amusing, entertaining—is that the object of the campaign and the issues—to allow people to vote intelligently. You have emphasized better than anybody else that the chicanery and the trickery of the 30-second ad——

Senator McConnell. I resent that, Senator Hollings.

The Chairman. Well, I am giving you my opinion and it will not change.

Senator McConnell. You go right ahead. Then I would like to respond.

The Chairman. You will get plenty of time to respond.

But the trickery and the chicanery of the political short with dogs and no responsibility for it is very, very effective. That is what is turning off these citizens.

The media experts—you ask them how best they can use 30 seconds and they will tell you in a flash to raise doubt, create anxiety, and instill fear that 30 seconds forgives any duty to explain or to defend or to embellish or anything else of that kind.

And so that is an artisan kind of thing and we have been taken over.

My media consultants and everyone else will tell you what I have just stated and they will say, look, in the end of the campaign, the thing to do is saturate the voters with ads the last 30 days in October. You cannot buy five minutes at one time to explain the vote on the flag or abortion or whatever.

They will say the best thing for you to do is hurry up and get ads in the can against your opponents. If he goes negative, then you have got to zap him. And that is really what has been happening in the campaign. It creates a cynicism; it turns them off. And people are not coming out to vote and it is destroying the process.

Senator McConnell. May I respond to your observation?

The Chairman. Yeah.

Senator McConnell. You and I have discussed this on the floor and I, with all due respect, Senator Hollings, I do not think you knew what the bloodhound commercials were about, nor when they were run.

Let me explain to you——

The Chairman. I have seen it numerous times.

Senator McConnell. But you do not understand it, obviously. What the bloodhound commercials were about were missing votes on the floor of the Senate while going out and making extra money. They were run six weeks. There was no sneak attack. Six weeks before the election. Six weeks before the election.

The reason they were not adequately answered is because there was no answer. They were absolutely true. It was not a sneak attack. There was nothing erroneous about it, and if my opponent had had a good answer for them, he had six weeks to provide it.

So you are absolutely incorrect. First, as to the sneaky nature of it and second——

The Chairman. I never used the word "sneaky." You continue on, but I never said sneak.

Senator McConnell. Six weeks before the election. The issue is about missing votes on the floor of the Senate while you were out earning extra money. Six weeks to answer the charge. He could not answer it, because it was true.

The Chairman. That is right. And what is wrong with Senator McConnell appearing on T.V. and saying, look folks, I believe that when I go to Washington as your Senator, I should work there representing you people and not off taking trips and missing votes, and making speeches for money. I should be representing you, the voters, not focusing on me and how much I can make from a speech or where I can travel to in these exotic places.

I believe when you elect a man to go up there and serve you, he should be at his job, working at that particular job, and if you elect me and send me to Washington, D.C., that is what I am going to be doing.

Senator McConnell. And if this bill had passed and the courts had held it constitutional, that would have been the device to employ that message. But I think in the meantime, candidates, like advertisers of any sort, are going to try to be as effective as they can be. This is, after all, the communications age.

The Chairman. Exactly. And we have been taken over by them. That is exactly my point.

Senator McConnell. I do not know that we have been taken over by them.

The Chairman. Well, we are all running around here like there is some mystery. There is no mystery to the cynicism and turnoff and the lack of interest, I never said "sneak" attack. I never said it was inaccurate. I said it was very clever, very tricky, very attractive.

Senator McConnell. And very effective.

The **Chairman**. And very effective. It was so effective, I said, well, now, what do they do—so they got the dogs downtown here in Washington—I hired them—I think maybe the same dogs.

And I was going to have them come around and they were going to find me with the green eye shade at 11:00 o'clock at night working at my desk. They do the same thing, and they said, oh, there he is, working for the people of South Carolina. We got the same dogs, so you got us all into the dog tricks.

Senator **Ford**. No, I got mine from Davis County from the sheriff's department.

The **Chairman**. I would yield, Mr. Chairman, but is it interesting we have here—three senators agreeing on the effectiveness of these ads. I think that is significant.

They also agree on how to counter these ads. I think that is significant.

Number three, the fact is that it does not add a darn thing to the process whatsoever, where the average viewer is saying, they are all running around there with dogs and everything else like that, and yet not say what they are going to do about the deficit, or what they are going to do about the environment, or drugs, or anything.

You see we do not discuss issues. We discuss Willie Horton and all of these other kind of things that are not really national problems.

And I guess we are making our point better than I even hoped to make the point by discussing this with you. I did not say it was "sneaky." In fact, I agree with you—it came at the end. It was very effective and very open.

But it was not accountable and I do not know that it would have been run that much if you, as a participant and the opponent had to appear each time and continue to say that. I do not know. But at least we would have accountability.

Thank you, Mr. Chairman.

Senator **Inouye**. Senator Danforth.

Senator **Danforth**. Senator Mathias, your point about objective and subjective standards is very well taken and because of that same concern we were careful in drafting this legislation to create an objective and not a subjective test.

So we say that—we talked about, to refer directly or indirectly to another legally qualified candidate for that office, such reference shall be made in person. In other words, any reference—it does not matter if it is an attack, or it could be high praise—and the reason was an attempt to make an objective standard.

The same is true with respect to independent broadcasts. We say, material which either endorses a legally qualified candidate for any Federal elective office or opposes a legally qualified candidate for that office, and so again, whether it is positive or negative is irrelevant. It is an attempt to make an objective test.

Senator **Mathias**. That raises a question as to whether you want to provide equal time to someone for a statement, a supportive statement. If the Anglican priests of Missouri come out and endorse Senator Danforth lavishly, as they should, are you then going to give Senator Danforth extra time to respond to that ad?

Senator **Danforth**. No, no. It is the person against whom it works, obviously.

Senator MATHIAS. But that raises a subjective question.

Senator DANFORTH. Well, I do not think so. I mean, I just do not think that it is a subjective test to say, "If any licensee permits a person to use a broadcasting station to broadcast material which either endorses a legally qualified candidate for any Federal elective office or opposes a legally qualified candidate for that office, such licensee shall within a reasonable period of time provide to any legally qualified candidate opposing the candidate endorsed, or to an authorized committee of such legally qualified candidate, or to any legally qualified candidate who is so opposed," and so on.

I really think that it is not subjective and I would urge you to really examine the bill itself and if you do not think it is, please point that out.

Senator MATHIAS. That is a helpful comment. I think you still will have some questions as to exactly what the intent—there will be some very subtle wordsmiths, as I said earlier, who will attempt to use these innovations.

Senator DANFORTH. I doubt it, but we specifically faced exactly the same concern that you have expressed. It has been raised by a number of people in the past when we have talked about negative campaigning; people say, how do you define negative and so on. So we have attempted to make it absolutely objective. It is the reference that triggers the bill and not the content of the reference.

Senator MATHIAS. I think your explanation here today is helpful in explaining the intent.

Senator DANFORTH. I would just say, Senator McConnell, we have had this discussion on a number of occasions and you have expressed strong sentiment about this bill. I just would say that, as a matter of fact, I do not think that political campaigns today are any more robust in their debate than they were at the time of Oliver Wendell Holmes. I do not think that these 30 second commercials, without any attribution of the source of them, constitute robust campaigning.

I think, as a matter of fact, that they obscure the nature of the debate and that if a candidate runs commercials and does not assume responsibility for them, if he is not willing to come forward and say, hey, these are my commercials, I am responsible—this is a campaign between me and my opponent and this is my message and I am responsible for this message—I think that the refusal to assume that kind of responsibility does not add to the robustness and fullness of political debate. I think it detracts from it and I think it is fraudulent. I think that fraud—giving the public a false sense of who is responsible and who is accountable—does not add to political debate. I think it deprives the public of their ability to make an informed choice in the election.

Senator MCCONNELL. I could not agree more, and I think the quickest way to kill your candidacy is to make a fraudulent charge. I think the assumption that a lot of people have is that a negative assault is going to work. Typically, it does not work. In the vast majority of occasions, it does not work. Most negative ads are not effective. Also, almost none of them go unanswered.

So these charges do not run in a vacuum. They run and they are responded to and if there is a good answer there is another answer given, and there is an exchange, unless it is a campaign in which the two candidates are not on equal footing. In other words, one of them does not have any support or does not have any money, in which case, I would suspect that the candidate that has a lot of money and a lot of support will ignore his opponent.

I mean, typically the charges and countercharges are going on in races that are well-contested in which both candidates have a lot of support and have the opportunity to defend themselves and nothing can kill a campaign faster than to have to withdraw an ad. I can recall a campaign in New Mexico in 1982 that blew up over an inadequate commercial.

Senator Danforth. I think we are not meeting in what we are talking about. I just want to say again, that to provide the public with information as to who is responsible for this message is not detracting from the fullness of a political campaign and on the other hand, to so run political commercials so that the public does not know that candidate X is responsible for these charges about candidate Y amounts to a fraud.

Senator McConnell. That raises a question, Senator, in no way brought up about a better disclaimer, a more effective disclaimer. I do not have any problem with that. I think that whoever is delivering the message, it ought to be understood by the viewer that candidate X's committee is paying for it. I do not have any problem with that. But to require the particular format of the spot, it seems to me, is going too far.

As I said earlier, before Senator Hollings started jumping all over me, I am not wildly exercised about this bill one way or the other. I do think that it will make it much easier for all incumbents to win and will in all likelihood be ruled unconstitutional. That is my personal opinion.

But with regard to the viewers knowing who paid for it, I do not have any objection to making the disclaimer larger, to require it to be on the air a little longer so people can actually read it. I do not have any problem with that. I do not have any objection to that at all.

Senator Danforth. We did incidentally, on the question of constitutionality, when we first introduced this legislation—I guess it was two or three or four years ago—we got a lengthy legal opinion from the Sidley & Austin law firm on the question of constitutionality. It would be a fresh case, a case of first impression as far as the court is concerned and so they could not give an absolutely certain opinion.

But they pointed out strong constitutional arguments that could be made that the statute would stand, and so it certainly is going to be debatable one way or the other.

Senator McConnell. I think it is reasonable to assume that it would be litigated and that there are strong opinions on both sides as to the constitutionality. I cited Larry Tribe and another professor from Columbia who have taken an opposite point of view.

Senator Danforth. Thank you, Mr. Chairman.

Senator McCain. Mr. Chairman, I have to go and would appreciate the indulgence of my colleagues if I could have about two minutes to make a comment.

Senator Inouye. Without objection. Senator McCain?

Senator McCain. Thank you, Mr. Chairman. I appreciate the opportunity. I have remarks to make in a conference down at the Hyatt and I apologize. I will be back.

First of all, I would like to refer to the "nonsense about incumbency." I do not think that this system waits for indictment, detoxification or retirement in order to replace incumbents. Ninety-eight percent of the incumbents who ran for reelection in the House of Representatives were reelected.

No one that I know of believes it is nonsense to say that the incumbent has incredible financial, travel, mail, every other incredible advantage over the challenger and in order for a challenger to mount any kind of a credible race, particularly in high population areas like Los Angeles, he either has to be either incredibly independently wealthy or somehow be the source of funds which range in the area of a half a million dollars in the case of a congressional race, just to get on a level playing field.

I do not view it as nonsense to make a case that when 98 percent of those who seek reelection are reelected that that is a satisfactory situation. Believe me, I know I express the view of the overwhelming majority of the American people that the process is badly skewed in defense of the incumbent.

Getting back to this business of, as Senator Mathias raised the question, suppose instead of Senator Mathias that the Anglican bishops endorsed Senator Danforth, suppose the Ku Klux Klan endorsed Senator Danforth, then who gets the equal time? Senator Danforth or his opponent?

I think, according to the legislation as described by Senator Danforth, it triggers and immediate free time for his opponent. Senator Danforth is now endorsed by the Ku Klux Klan and the Communist Party and so therefore his opponent gets free time.

Senator Mathias. The cocaine dealers of greater St. Louis.

Senator McCain. It could be insane to say that any reference—suppose that my opponent opposes the treatment John McCain gives of the Grand Canyon. Is he more effective by having his face in front of the television set, or is it more effective to show a picture of the Grand Canyon clouded with smog because John McCain would not do anything about a power plant that is near the Grand Canyon?

What if Barry Goldwater makes a commercial for me that says, John McCain supports a balanced budget amendment to the Constitution and his opponent opposes it? Does that trigger an automatic free time for the opponent? In my view, no.

I think there is a lot of good things in this legislation that Senator Danforth and Senator Inouye and others have proposed, but this business of automatic triggering of free time, there is no subjective way to view it, and so I also agree that we have got to look at this issue comprehensively as opposed to just—as opposed to this, obviously what we have here.

I also think that Senator Bryan and Senator Graham do have indeed some very cogent points to be made here as far as this accountability issue is concerned, which I think would cut both ways.

Thank you, Mr. Chairman and I thank the indulgence of the Committee.

Senator Inouye. Senator Pressler?

Senator **Pressler**. Thank you. I just have one or two questions. Senator Bryan is, as I understand it, not a co-sponsor of S.999, but you and Senator Graham have your disclosure bill you are bringing forward.

But I would like to ask you and Senator Mathias, who mentioned the comprehensive approach, now, with this advantage to incumbents—although I am told that negative ads are used by incumbents, or were in the last Senate races against challengers if they got close to them and that groups supporting incumbent senators use negative ads a great deal, and indeed it may well be the case in the last round of Senate races that incumbents or supporters of incumbents used negative ads as much—but now, Senator Mathias, when you said comprehensive, were you talking about spending ceilings that might give challengers higher ceiling, or elimination of PACs or soft money?

How are we going to relate all these bills together, I guess—the Bryan-Graham bill, the S.999 and of course there is some, I think Senator McConnell has some campaign reform legislation in general. Should all of this be put into one ball of wax, is what I am saying?

Senator **Mathias**. In my view, that is the only way you can effectively do it, because I do think that there are some serious constitutional questions that are raised by this legislation and the only way you can get around the restrictions that were enunciated by the court in the Buckley case would be to go to public financing and to make the receipt of public funds the condition upon acceptance of some reasonable restraints.

Senator **Bryan**. Senator, if I might be able to respond, I agree that in theory, ideally, in a perfect world a comprehensive piece of legislation addressing campaign reform would be the ultimate.

The reality is, that is not going to occur and so to use the banner of a comprehensive campaign reform is often, it seems to me, an excuse for taking no action at all; that there are areas in which we can agree and certainly there has been some bipartisan discussion today.

Some areas are admittedly controversial—some of the things that Senator Graham and I have talked about in our bill—but my view is that some progress is better than none.

Senator **Pressler**. Well, I might say some of these reform bills—for example, the public financing of presidential campaigns. I do not know how it slipped in that people can give $100,000, and I am supposed to be over in the Foreign Relations Committee where we have six of them up, ranking members on the European Subcommittee and we are having hearings on six new ambassadors, all of whom I think gave $100,000. I do not know how that was—that was part of a reform package, believe it or not.

Senator **Ford**. Larry, would you leave this meeting and go over and find out so we might be able to follow that track?

Senator **Pressler**. The only place I can meet rich people is in the European Subcommittee.

None of them contributed to me, so I feel left out. I feel hurt.

But in any event, that was part of a reform bill and so what I am saying is, I think we should be very careful what we do here, because it seems we keep letting soft money slip in—new limits, new loopholes, phone banks and so forth—and what we do here I hope we do it on a comprehensive basis. But based on some of our past reforms we are going in circles.

Senator INOUYE. Senator Ford?

Senator FORD. Thank you, Mr. Chairman. I think most of us are kind of making statements rather than asking questions. What we are trying to do here today I find that those who oppose this bill oppose other bills with the exception of theirs, and can always find something.

It reminds me of a piece of legislation while I was in the state Senate that said all types of medicines, patented and otherwise, and goods of that nature, should be sold in a drug store and not in a mercantile store, and then they finally got down to the position, how do you make a difference in which is which?

So they said, if you take the contents of the package it will make you sick, and that would be the description or the deciding factor. So they came up with, if you eat a whole tube of toothpaste why, you will get sick. So we had a hard time trying to decide which was which. We finally worked it out, but they found something wrong, you know, because they did not want it.

Now we find that we are trying to look at an overall picture and I think Senator Mathias is absolutely right and not being a lawyer makes it very fortunate for me, because the court has said that the only way you can restrict expenditures is either of two ways.

One, with public financing, and we tried that at the least possible denominator and of course you have already heard here this morning that there is absolutely total opposition to any kind of public financing; or as my good friend here has proposed with, his amendment to the Constitution. That simple. You know, you can do those things.

I find another problem is that we are losing, I think, the average constituent out there representing people in the United States Senate. It is beginning to grow and grow where an individual can spend his personal money in the millions of dollars.

As Senator Hollings has said, with that kind of money, and you without any personal money equal in contributions, one put in 98 percent of his personal money and 2 percent came from contributions and the 2 percent I think amounted to a million or so dollars. Well, that is about all—that is a maximum amount I have ever raised in a campaign in Kentucky.

So we find our rights to get our message over restricted because we do not have personal wealth, or we are not born to personal wealth. So we find that a real problem and I would hope that we could find some way to—I do not mind debating. Hell, I like it. I get sweaty and warm under the collar and things like that. That does not bother me at all.

In fact, I have been—they tried to get to me on platform one time when it got so hot down in Kentucky and so I remember good debates. I like them. I do not think there is anything wrong with it.

So we get more and more to the point where you have the two candidates, not necessarily in the primary, we are talking about the general election—getting down to the two who are carrying the banner. Now, the independent PACs were successful last trip with, I guess your exception. So with the 75 percent batting average, or

750 batting average, that means what you all have been saying is that is the wave of the future and you are very concerned with it. I am, too.

Now, we get into First Amendment rights, say anything you want to, but I think you have got to put your finger on the nerve—have a vast or major disclosure and just say, here it is, and these are the people, as you said, Senator Bryan, that have said nothing about foreign trade.

There was some implication that this was a way to get at our trade policy. If you could get the right kind of voters up here to vote in favor of a free trade position rather than a fair trade position, and yesterday the comment was, after the May balance of trade deficit, that we lost 250,000 American jobs in May, all in automobiles basically.

So there are a lot of very soft spots here. I wish we could get together and try to find a bipartisan way resolve this problem. But we have not found it, and as long as you cannot get enough votes to exercise cloture, then you are not going to pass a comprehensive bill. You are not going to get it.

The procedure we are following here now is when we had a constitutional convention in Kentucky, Senator McConnell probably remembers this well—and we rewrote our Constitution, well they put out a little booklet, the old Constitution and the new Constitution.

Well, when people started reading it they did not like the old Constitution either, you know, so we went from two amendments to the Constitution to five, and we are beginning to I think improve, periodically, our Constitution, and I think that is what you are trying to do here.

We are not going to get the comprehensive bill we are all talking about and so we have to take stabs at making it better and I think Senator Bryan and Senator Graham are at least a on a track that I feel is correct and I want to help them. I think Senator Mathias and I agree on where we ought to go—but Mack, there is no way to get there I do not think, right now.

Senator **Mathias**. Well, it is very difficult but it seems to me there ought to be a sense of urgency about it and I agree with Senator Hollings about this and Senator Danforth.

It is all very well to say well, we have always had negative campaigning. George Washington's campaigns, he was attacked, and Abraham Lincoln, he was subjected to bitter negative campaigning. There is no question about that. That is historical fact.

But that was by crude printing presses, newspapers of limited circulation. You are now dealing with the electronic media that is in every American home. It has a pervasive influence, a power, a strength that is unlike anything that has ever happened in American politics before, and that lends, it seems to me, an urgency to doing something serious and soon.

I would hope that it would lead members of Congress to take some action on a comprehensive bill. I realize that Senator Hollings is right, that that has been impossible to achieve. But something really needs to be done now because we are dealing with forces that are stronger than have ever operated on American politics before.

Senator McConnell. Mr. Chairman, could I make a quick observation? There has been a lot of talk about independent expenditures and I might point out, having been in virtually every one of the bipartisan meetings over the last three years on campaign finance reform, that is area both sides agree on.

There is not any question that both the Republicans and the Democrats would like to do everything possible that you can do consistent with the Constitution to make it difficult to engage in independent expenditures. This is not one of the areas that separates the parties, and I think if we ever did decide to pass a piecemeal bill independent expenditures, whatever we can do constitutionally, would not be a contentious area. That has not been a problem.

I have just one other random thought that popped into my mind since Senator Danforth and I have discussed this issue off and on for two or three years. You know, sometimes candidates are not used extensively in television for two reasons that will probably make everybody in the gallery snicker: A, they are not very attractive and B, they are not very articulate.

Sometimes they are not very good on television and many times, when a candidate is not featured prominently in ads it is a strategy decision on the part of those who advise him that—you know, just everybody said Richard Nixon looked like hell on television, and he did. I am sure that if he could have made it through a campaign without having to appear personally, he probably would have done it.

I just think that is another whole dimension to this and I just hope that the Committee will continue to thoughtfully consider whether or not this measure is in the best interest of our country and if Congress decides to pass it, we will just let the courts decide. It is a very, very fascinating and interesting subject. Of course, we have gone far beyond that bill in our discussion here today.

The final thing I would like to say is that I do think that there are a number of areas of campaign finance reform that we do agree on. The millionaire problem Senator Ford mentioned is a constitutional problem, but there are other ways to get at that consistent with the Constitution. We have had bipartisan agreement on a millionaire's loophole provision.

We have had a lot of support for a campaign broadcast discount rate which—Senator Inouye had a hearing on my bill last year and there is a new bill this year that Senator Danforth and Senator Hollings, I think, are promoting that would provide great relief on the expenditure side.

Many Democrats joined with all Republicans in feeling that soft money disclosure, nonparty soft money ought to be disclosed. We have been talking about disclosure here today. As we all know, some Democrats are very reluctant to get into nonparty soft money disclosure. Why? Because that means union disclosure.

If we are going to have disclosure of independent expenditures, if we are going to have further disclosure for the candidates, why not of the organizations? There are a number of areas here that we can deal with that would not go as far as Senator Mathias would like to go in public funding, because that is obviously not going to happen, but I think there are a number of areas that could add up to comprehensive reform.

At the top of the list is independent expenditures and maybe we could pass a bill that would be fairly comprehensive in nature that did not get at spending limits and public finance, which have been the issues that have divided us along partisan lines.

Thank you, Mr. Chairman.

Senator INOUYE. I wish to thank all of you for providing us with very open and robust discussion of a matter that is very dear to all of us here. I express the gratitude of this Committee. Thank you very much.

Now we have a panel consisting of Mr. Curtis B. Gans, Director of the Committee for the Study of the American Electorate, Mr. Charles E. Guggenheim, President, Guggenheim Productions, Mr. Bob Squire of Eskew Communications and Mr. Barry Lynn, Esquire, of the American Civil Liberties Union.

May I first call upon the Director of the Committee for the Study of the American Electorate, Mr. Curtis B. Gans?

STATEMENT OF CURTIS B. GANS, DIRECTOR, COMMITTEE FOR THE STUDY OF AMERICAN ELECTORATE

Mr. GANS. Thank you, Mr. Chairman and thank you and the Chairman of the Committee and the ranking minority member for inviting me and for putting forward this legislation which I think the country should be profoundly grateful for.

Last year we held an election and half the Nation stayed home. We had the lowest turnout since 1924 and outside of the South we had the lowest turnout since 1824. Turnout declined in every age, income, racial, ethnic, occupational category, except for people 65 to 70.

During the last two and a half decades turnout has declined 20 percent nationally, 30 percent outside of the South. More than 20 million people who used to vote no longer do so. Our 18 to 24 year olds are now voting at a 29 percent rate in presidential elections and a 16 percent rate in mid-term elections.

Since 1974, the cost of House races has gone up from $53.5 million to $256.5 million. The cost of Senate rates has gone up from $34.7 million to $201 million. The fact that both of these things have occurred—spiraling campaign costs, declining voter turnout—at the same time that television has come to occupy a place of centrality in our lives and in the conduct of our politics, I think—and I believe after 14 years of studying the problem—is not a coincidence.

I also believe that the fact that we are the only democracy in the world that does not regulate political advertising on television and we have the highest cost and the lowest turnout of any democracy in the world is also not a coincidence.

Reasonable people can disagree about what measure to address this problem will meet the test of effectiveness, enactability and constitutionality. As the Chairman and ranking minority member of this Committee know, I believe that the legislation that has been introduced in previous Congresses by the Chairman of the Subcommittee—Senator Ford and Senator Rudman—stands a better chance of meeting the muster of those various issues.

But I think the important thing is action, and action now. I hope this Committee will report S. 999 out, both in Subcommittee and Committee, and that the full Senate will work to get the most effective bill to deal with the problem because we are about to make the question, "Suppose we gave an election and nobody showed up," no longer a rhetorical exercise.

In this context, I think it would be worth looking at what the staff of this Committee has prepared as a compendium of some examples of the advertising we are facing. Some of it was presented at the hearing in 1985 when the Clean Campaign Act was first introduced.

I have been told that some of the copies that have been made four years later are somewhat rough, but I think people will clearly get the idea of what these commercials are about.

[A series of political commercials were shown]

Mr. GANS. I think those ads show us a number of things. The first is the negative advertising on television is not a new phenomenon. It has been with us a long time. Nor are the demagogic ads worse now than they were then. I do not think there is any worse ad than that Ku Klux Klan ad. On the other hand, what is different is the volume—the number. Instead of an isolated campaign they have become the staple of every campaign.

Secondly, I think they are, to an ad, either oversimplifications, or misleading, or more likely distortions and even sometimes downright dishonest.

I do not know what relevance the whale and Senator Byrd's house has to the major issues of our day and to the reasons why he should or should not be reelected. Senator Metzenbaum is not for child pornography. He has a view of the First Amendment.

Larry Coughlin has done other things than travel on junkets in his years in office. Senator Goldwater, whom I did not vote for in 1964, did not either support the Ku Klux Klan or putting strontium-90 into people's milk.

What those ads are, are essentially captive because they appear in the middle of programs and they appeal to the emotion as Richard Nixon told us, "I am not a crook, does not work as a defense. You cannot answer them by just denying them, you answer in kind.

So what we have is sort of an escalating arms race of attack ad after attack ad that serves to provide air pollution in our political airwaves. They are being used because people like my friend to my right, Mr. Squier, say they work. And they do work. They do work to depress the turnout of the opponent, to create doubts.

They are based on the tracking poll where you see you have a gap between you and your opponent, and what you try to do with these ads is through symbolic action solidify your support and weaken his hold on the electorate, and then as the gap closes the opponent sees that his tracking polls show a gap reduced and he replies in kind.

But the truth is, in any given election only 50 percent of these consultants can make that work for them and 100 percent of the electorate is the loser. We replace debate with distortion and demagoguery. 30 second commercials have now replaced accountability.

That is not a self-regulating phenomenon. There are individual elections like in Wyoming, when the Democratic candidate to replace Secretary of State Cheney had an ad that was beyond the pale, and the public decided clearly on the basis of that ad not to vote for him.

You have a situation in Colorado where Governor Roy Roemer 30 days before the election decided to eschew all negative ads and because of that he really did get help in being elected.

But by and large, what the electorate sees is this confluence of attack ads of a demagogic nature that calls into question all the candidates and the political process as a whole, and what they do is vote with their bottoms and sit out the election.

Let us look at the facts. The causal relationship between increasing use of this advertising and increased campaign cost is inescapable. We have been tracking the five most expensive Senate campaigns since 1974. In 1974, the average cost for the five most expensive campaigns was $1 million, or 67 cents a vote. The average amount spent for media in those five most expensive campaigns was $350,000, or 12 cents a vote.

In 1984, the average cost of a Senate campaign, of the five most expensive, contributions was $10 million, or $7.74 a vote, and the average cost for media was $5 million, or $3.54 or over. Campaign costs went up ten times, five times in actual dollars. Media cost went up over 30 times, or 15 times the cost in actual dollars and the costs are not simply borne by the increased cost of using the media. They are borne by the increased allocation to media within campaigns.

In 1974, the average competitive campaign spent 31 percent on television. In 1988, the average competitive campaign spent 57.9 percent on television and that is exclusive of fund-raising cost and fund-raising cost in the average campaign budget is about 30 percent.

So what we are talking about is 90 percent of the campaign budget going either to fund-raising or to television advertising, which leaves 12 percent for things like candidate travel, staff, speechwriting, press and public relations, and absolutely nothing for things involving people.

The turnout effect is harder to show, but it is there. I gave you some grim figures at the beginning of my testimony about turnout. But turnout by every objective standard should have been going up. We, in the 1960s began to make it easier for people to vote and turnout has gone down.

The classic book on who votes says that turnout should be higher amongst the educated, the stable and the older, and yet twice as many people are going to college and graduating college now than did in the 1960s and turnout is down. We are less mobile than we were in the 1960's and turnout has gone down. We have been getting older as a population since 1971 and turnout has gone down.

We are also, in response to Senator McCain's concerns, more competitive, not less, which is to say the elections which have the highest turnout are elections for president, senator and governor, and we no longer have a one-party white South. All of those elections can and are competitive in every part of the country now, with the Democrats having a little trouble now in the South.

In 1986, there were 24 competitive elections decided between 54 and 46 percent. 16 of those had declining turnouts. In 1988, we had 9 of those competitive elections. All 9 had declining turnouts.

In 1982, Governor Jerry Brown and Senator Pete Wilson spent a total of $13 million on their campaigns and $7 million on television and in 1986 Senator Cranston and former Representative Szchau spent $25 million, $13 million on television, and the 1986 race had the lowest turnout in California history. We are spending more and getting less.

The same thing is true in your state, Senator Danforth. Harriet Woods and you spent less and were actually to some extent less negative in 1982 than Harriet Woods and Kit Bond in 1986, and turnout went down in 1986. The same thing is true with Mark White and Governor Clements.

In 1986 when the parties offered no theme, no issue, no program—we had nothing but these demagogic commercials—we had, according to figures supplied to me by the Republican National Committee a 10 percent increase in negative attitudes towards candidates and a 10 percent decline in voter turnout.

In 1989, when more money was spent than ever in the Wyoming congressional race, you had a 20 percent decline in voter turnout, a turnout that was 20 percent lower than ever existed in the state of Wyoming in a state-wide race. In Virginia, where you spent $10 million in a Virginia primary you had a turnout of 8.8 percent, or 20 percent lower than the average primary turnout in the worst primary year, which was in 1986. It is indicative data, but I think it is there.

My written testimony gets into other issues—accountability, limitations of options, of political choice, limitations in who our candidates are likely to be, the impact of ads on political policy and the danger that the public debate will be stifled by the images that people are likely to face when they are out on the campaign trail.

I would like to just end my testimony dealing with the question of speech, because it is the heart of this whole question. I am not a constitutional lawyer and I yield to no person in my belief that the First Amendment of this Constitution is what differentiates ourselves from other democracies and makes our democracy superior.

I have not mentioned in most of my testimony the word, or emphasized the word negative, because I do believe, and Senator McCain has suggested, that the record, character, policy positions and advisers of any given candidate is legitimate subject for debate.

But we are not having debate. We are having distortion and demagoguery, anonymous actors have substituted for accountability. We have no answerability and we are doing it in a medium that is to my mind profoundly different than any other medium.

It is in my mind the difference between nuclear weapons and conventional weapons in its impact and its cost and its reach, and whereas it may be desirable in the weapons field to regulate conventional weapons—it is necessary for the health of humanity to regulate nuclear weapons and whereas I believe in every other medium it is undesirable to regulate speech, I believe that within given limitations in which you are returning speech to dialogue and accountability, in this medium it is a necessity to do so.

To put it in a more mundane fashion: I know Senator Danforth and I are baseball fans. It is not permitted in baseball to throw at the head of an opposing player. In football we have unnecessary roughness. In hockey, you do not permit spearing. In boxing you cannot hit below the belt.

I know of no more important game to have equal level and honorable ground rules than politics and public service. We need to return probity to our politics, civility to our dialogue, responsiveness and accountability to our politics and purpose to our parties and the political enterprise, and I hope that through this legislation we will be able to do that.

Thank you.

[The statement follows:]

Non-Voter Study '88 - '89

MAURICE ROSENBLATT
President
V. MARIE BASS
Treasurer
CURTIS B. GANS
Director
Advisory Board:
TERRY SANFORD
Chairman
JOSIAH LEE AUSPITZ
THE HON. MICHAEL D. BARNES
JACK A. BLUM
THE HON. EDWARD BREATHITT
SAM W. BROWN
ROBERT BURKETT
WALTER DEAN BURNHAM
DAVID COHEN
EDWARD COSTIKYAN
MITCHELL DANIELS
JOHN DEAN
WILLIAM DODDS
SOPHIE ENGELHARD
LEO ESTRADA
JAMES FITZPATRICK
JEANNE J. FOX
MARIE GARBER
DAVID R. GERGEN
THE HON. JOHN J. GILLIGAN
GILBERT A. HARRISON
PETER HART
RUTH HINERFELD
THE HON. PHILIP HOFF
WILLIAM HOLAYTER
SUSAN B. KING
WILLIAM LUCY
JEFFREY LYNFORD
ABIGAIL McCARTHY
LAWRENCE MEAD
HAROLD MENDELSOHN
MAURICE MITCHELL
NANCY M. NEUMANN
JAMES A. (DOLPH) NORTON
KAREN PAGET
DAVID PALETZ
THE HON. JAMES B. PEARSON
DOROTHY S. RIDINGS
THE HON. FRANCIS SARGENT
NEIL STAEBLER
CYRUS VANCE
TED VAN DYK
CARL WAGNER
ANNE WEXLER
RICHARD WHALEN
F. CLIFTON WHITE
JOHN WHITE

TESTIMONY

OF

CURTIS B. GANS

VICE-PRESIDENT AND DIRECTOR

COMMITTEE FOR THE STUDY OF THE AMERICAN ELECTORATE

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

U.S. SENATE

JULY 19, 1989

Mr. Chairman: My name is Curtis Gans. I am vice-president and director of the Committee for the Study of the American Electorate, a non-partisan, non-profit, tax-exempt research and public policy development organization, which has, for the past 14 years, been attempting to study and address the problems of low and declining political participation in America.

I want, at the outset, to thank the chairman and ranking minority member of the Committee and the chairman of the sub-committee for inviting me to testify on this important issue and the staff, both majority and minority, for their courtesy and help in the compressed time-frame necessitated by the deadline for this hearing and the press of other business.

In a larger sense the whole nation owes the chairman of this commitee, the chairman of this sub-committeee and the ranking minority member of this committeee a debt of thanks for raising, pressing and placing on the public agenda the issue of televised political advertising and its disastrous effects on the American political process.

Committee for the Study of the American Electorate
421 New Jersey Ave., S.E., Washington, D.C. 20003
(202) 546-3221, 478-1943

Mr. Chairman: Last year. we held a Presidential election and nearly half the eligible electorate stayed home. The United States had the lowest turnout since 1924 and, outside of the states of the old Confederacy we had the lowest turnout since 1824. Turnout declined among every age, income, racial, ethnic, level of educational attainment and occupational group with the exception of those aged 65-70.

Since the 1960's. turnout in both Presidential and mid-term elections has declined by more than 20 percent nationally and by more than 30 percent outside of the South. More than 20 million Americans who were formerly voters, no longer bother to cast their ballots. Young citizens, aged 18-24, voted at a 29 percent rate in 1988. at a 16.6 percent rate in 1986.

The United States. if one counts both its Presidential elections and its mid-term elections. now has the lowest rate of voter participation of any democracy in the world.

Since 1974. campaign spending for the U.S. House of Representatives has jumped from $53.5 million to $256.5 million. Spending in races for the U.S. Senate has increased from $34.7 million in 1974 to $201.2 million in 1988. These figures represent a nearly 600 percent increase in campaign costs in a decade and a half or, in constant dollars, more than a 300 percent increase.

Both of these phenomena -- spiralling campaign costs and declining voter turnout -- have occurred precisely during the time that television has become a central factor in American lives and in the conduct of the nation's politics. It is my considered judgment, based on 14 years of study in this field, that this juxtaposition -- the rise of television, the increase in campaign costs and the decline in citizen civic involvement -- is not coincidental.

The United States is also the only democracy in the world which does not. either by time or format, regulate its televised political advertising. The United States also has substantially lower turnout than any other democracy. And it is my considered judgment that the juxtaposition of these factors -- the lack of regulation of television advertising in the United States and its substantially lower turnout -- is not coincidental.

Reasonable people may disagree as to which form of constructive regulation of political advertising on television will be most effective. offers the best chance of enactment and can pass Constitutional muster. The chairman and ranking minority member of this Committee know that I believe legislation which has at times, been introduced by the chairman of this sub-committee and Sen. Warren Rudman and which has been co-sponsored by Sen. Wendell Ford, the chairman of the Committee on Rules and Administration. is more likely to survive these various tests than the legislation around which these hearings have been organized.

But the critical question now is not the form of such legislative regulation but whether there will be such regulation at all. For until and unless there is such legislation and regulation, it is likely that the conduct of politics in what prides itself as the best and greatest democracy in the world will continue to set an example, except in time of war, recession or in the presence of an overwhelmingly charismatic candidate, for the greatest percentage of voters driven from the polls and for a government of. for and by the intensely interested few.

It is within this framework that one may view examples of the current state of American politics:

(VIEWING OF ADS)

With regard to these ads there are five things to be noted:

--Negative, trivial and scurrilous ads are not a new phenomenon nor are present versions necessarily more outrageous than those from other elections. What is different is not the type but the volume. Where such ads were once limited to the occasional campaign and accompanied by howls of outrage or put on largely by independent expenditure groups, they are now the staple of all campaigns for which television can be used as a primary medium of communications.

--Each of these ads and the thousands of their brethren that disgrace the air-waves each election are at best over-simplified and misleading, at worst and often, distorted and downright dishonest. Because of this they present a necessarily false picture of the issues, the character of the candidate and, to a captive public -- since these ads are designed to be shown in the midst of programming the public is interested -- a negative image of the political enterprise as a whole.

--They have become the staple of campaigns because the independent. non-responsible and increasingly irresponsible political consultants who today run American campaigns say they work to win elections. But if truth be told, they work for only 50 percent of the consultants and candidates who win while 100 percent of the electorate which has to view these ads becomes the loser.

--These ads emerge from the same technological development, the tracking poll. When the consultant for candidate A finds through the tracking poll that the candidate for whom he or she works is substantially behind candidate B, he orders up a set of demagogic attack ads to cast doubts about the opponent, loosen candidate B's hold on the electorate and reduce the impulse to vote for B. What happens, as a consequence, is that the consultant for candidate B notes through his tracking polls that the gap between the two candidates is closing, has closed or that A has overtaken B. And in order to restore B's primacy, he orders up a dose of the same medicine.

--He does so because the nature of the ads used against B are virtually unanswerable, appealing, as they are intended to do to the emotions rather than reason. The only recourse is to respond in kind. The result is an escalating arms race of attack ads that becomes the equivalent of airwave pollution. And the impression that the electorate gets is that all politicians and the political process as a whole are not worthy of their respect and trust.

--These ads, in turn determine the nature of the entire campaign, for they establish the themes around which the campaign is conducted. If we have campaigns that are increasingly 30 and 60-second spot advertising, seven second sound-bites and candidates who seem unable to say an unprogrammed word, it stems from a single source -- campaigns that are run almost exclusively on television by irresponsible political consultants who, in the pursuit of winning, know of no tactic too low or trivial to besmirch their opposition and drive down the opponent's turnout. Does anyone seriously believe that the 1988 Presidential election was or should have been about Pledges of Allegiance, "good jobs for good wages, prison furlough programs, or competence?" Or that the campaigns depicted in these hearings were or should have been about whales and homes as in Sen. Byrd's case?. Or that Sen. Metzenbaum is in favor of pornography or that Sen. Sasser is a supporter of Fidel Castro or that all Rep. Coughlin has done in his years in Congress is take trips or that Sen. Goldwater either favored the Ku Klux Klan or putting Strontium 90 in a child's drinking water supply?

This is not a self-regulating phenomenon. There are occasions -- such as when Gov. Roy Roemer chooses a month and a half before an election to eschew attack advertising or when candidate John Vinich will air an ad that is patently unfair -- that the public, having a clear choice, will, in turn, make one. But for the overwhelming majority of campaigns, what the public sees is a set of virtually indistinguishable (in type) ads which cast aspersions on all candidates and invite the response the public is increasingly witnessing. The electorate is voting with their bottoms -- they are turning off, tuning out and sitting out elections in ever-increasing numbers and frequency.

Nor can this be regulated through some kind of Fair Campaign Practices agency such as existed two decades ago. The sheer volume of such ads perhaps 2,000 nationally in a single day, and their emotive appeal makes rational review impossible. Nor can an address that is limited to the federally funded Presidential campaigns have much utility since the bulk of the problem. expenditure and air pollutions lies for offices below the level of President.

Similarly an approach which would address the accountability problem simply by putting a candidate's name and picture on an ad will not suffice as witnessed by the recent campaign -- one of the more vicious in recent memory -- between Sen. Connie Mack and former Rep. Buddy McKay in which such a law was operative. Nor can one tie regulation to the lowest unit rate or public financing of federal campaigns below the Presidential level when such rates and financing are harder to enact than media regulation and when a candidate might be likely to foreswear such rates and financing in the pursuit of victory and use the more demagogic advertising formats.

All of which is to suggest strongly that this is a problem which much be addressed head-on.

It must be addressed head-on because of a number of important and specific threats to the health and welfare of American democracy which include but are not limited to

1.Turnout: While, in part due to my not so gentle ministrations in the field of publicity. it has become generally known that American turnout is low and has been declining for nearly three decades what is generally not known is that it has been declining while almost every political and demographic indicator says it should increase.

Since the 1960's we have substantially liberalized our laws governing registration and voting and our turnout has gone down. Academic theory has it that people who are better educated more stable and older tend to vote. Yet twice as many Americans are now attending and graduating college than did so in the 1960's, we are a generally less mobile society than we were in the 1960's and the population has been aging since 1971 and our turnout has gone down.

Our politics has also become more competitive. Forget what one reads about 98 percent,re-election rates for the U.S. House of Representatives. The fact is that for the races that draw the highest level of turnout -- President, U.S. Senate and governor

-- races are more competitive because there is no longer a one-party South. There is no state in which a statewide race is not potentially competitive. And still turnout goes down.

In 1986 there were 24 statewide races which were decided by a margin of 54-46 percent or less and turnout was down in 16 of them. In 1988, there were 11 such contests, all of which showed a decline in voter participation.

In 1982 there was a fairly close race between former Gov. Edmund G. Brown Jr. and present Sen. Pete Wilson in which $13 million was spent and about $7 million on television advertising. In 1986, the contest between Sen. Alan Cranston and former Rep. Ed Zschau was much closer and nearly double the amount was spent both overall and on television advertising and that contest had the lowest turnout for a U.S. senate race in the state's history. In Missouri more money was spent in 1986 than in 1982 both overall and on media in the contest between Sen. Christopher Bond and Harriet Woods than between Sen. Danforth and Ms. Woods and turnout was lower in 1986. The 1986 contest between Gov. Clements of Texas and former Gov. White was both more expensive and more demagogic and occasioned lower voter turnout.

In 1989, substantially more money was spent on the race to replace Secretary of Defense Richard Cheney in Wyoming than had ever been spent before on one race in that state and turnout was by a margin of 20 percent lower than for any race for governor, senator or representative in that state's history. In Virginia this year. more than $10 million in campaign expenditures, largely used for demagogic television produced a turnout in that state's Republican gubernatorial primary nearly 20 percent below the average turnout for statewide primaries in the year with the lowest turnout 1986.

There are of course, exceptions to the rule that massive media campaigns of the demagogic attack type produce lower turnout. The 1984 race between Gov. Jimmy Hunt and Sen. Jesse Helms. one of the most expensive and meanest in history. produced a record high turnout. But in this case, one was dealing with the two most highly recognized figures in the state, backed by large and long-standing political organizations and with substantial and deeply felt (by the electorate) differences between the two men. All of which likely had more to do with the level of turnout than either expenditures or advertising.

But for the overwhelming majority of campaigns. the consultants do their job successfully. By depressing turnout for the opposition in a race in which each campaign seeks to depress the turnout for every other competitor, turnout declines.

In the 1986 campaign in which neither party offered issue, theme or substance to the national debate and the campaign was conducted almost exclusively on the basis of demagogic commercials. there was. according to polling data supplied me by the Republican National Committee, a 10 percent increase in negative attitudes towards candidates which coincided nicely with a 10 percent declined in voter turnout.

If allowed to continue. this type of campaign will make the question, "Suppose we held an election and no one came? no longer a rhetorical exercise.

In a sense that is both larger and more precise, one of the best academic books on the causes of declining voter turnout in America. Ruy Teixeira's **Why Americans Don't Vote** traces three primary causes for the decline in participation -- 1. a decline in citizen feelings of efficacy about their vote or whether their vote makes a difference; 2. a decline in allegiance to and strong feelings for either of the two major political parties; and 3. a decline in newspaper reading as a primary source of information about politics.

Could it be that, in part underlying each of these causes lies the rise of political advertising on television -- 1. in the increasing demagoguery and trivialization of our politics that makes the perceived stakes not worth the effort to participate; 2. in parties without enduring messages or messages that are determined by pollsters and hucksters at any given moment; and 3. in information fed in short messages and sound bites which bear little relation to the concerns of the citizen or the problems they see?

2.Cost: There is no question that the spiralling cost of campaigns is directly attributable to the increased use of television advertising in general and the widespread belief that demagogic advertising works.

My committee has been tracking spending on the five most expensive campaign for the U.S. Senate in each election year since 1974 and for the competitive Senate races since that year. Some sample returns from these studies might be instructive:

--In 1974, the average cost of the five most expensive Senatorial campaigns was $1 million or $0.67 a vote. By 1984, the average cost was $10 million or $7.74 a vote.

--In 1974 the average amount spent on television advertising in these campaigns was $350 000 or $0.12 a vote. In 1984, the average spent on political advertising on television was $5 million or $3.54 a vote.

--In these most expensive campaigns overall cost increased ten-fold (five-fold in constant dollars), while media spending increased more than 30-fold (more than 15-fold in constant dollars).

--The increase in media spending, it should be noted, was more than double the increase in rates charged for political advertising.

[It should be noted that in the absence of a Sen. Jay Rockefeller who spent more than $32 a vote in 1984 and of a race of the likes of Hunt-Helms, both spending and media spending in the most expensive races in 1988 was slightly lower, but that fact was more than compensated by the rise in spending in competitive races.

--In 1974, candidates in competitive races for the U.S. Senate spent nearly $8 million overall (a little less than $1 million per race) and approximately $0.66 a vote. They spent $0.21 a vote on media.

--In 1986, candidates in competitive races spent more than $50 million (or more than $8 million a race). This resulted in a cost of $4.18 per vote in overall spending and $2.27 per vote in media spending.

--In 1988, candidates in competitive Senate races spent nearly $53 million overall (more than $7 million a race). They spent $4.41 a vote overall and $2.55 a vote for media.

--Thus, in competitive races overall cost has increased about seven-fold while costs attributable to media have increased nearly 13-fold (3.5-fold and 6.7-fold in constant dollars.)]

The conclusion is inescapable. Unless the use of television in the modern campaign is brought under some reasonable control, access to politics will only be available to those who either possess great wealth or have acess to and are potentially beholden to such wealth.

At a time when partisan perceptions of self-interest prohibit agreement on other aspects of campaign finance reform, regulation of television advertising, in view of its pernicious effects regardless of person or party, may be the only way to begin to end the upward spiral of campaign costs.

3. Allocation: -- One nexus between the impact of political advertising on campaign cost and the impact on turnout lies in the allocation of campaign resources.

In 1974 competitive Senate campaigns allocated 31 percent of their resources to political advertising. In 1988 more than 57.9 percent of every campaign dollar was allocated to television advertising. These figures are exclusive of fund raising costs.

This means that for the average campaign for which television is seen by the consultant who runs as the primary tool for its conduct, nearly 90 percent of the campaign budget is devoted to television advertising or fund raising for it.

This, in turn, leaves only 10 percent of the campaign budget for such things as candidate travel, speech writing, press and public relations and staff. And it means that nothing or next to nothing is spent on any activity that involves the citizenry.

It is thus no wonder that we have developed the political equivalent of the Silent Spring in American politics, in which there are no longer buttons and bumper stickers phone banks and field organizations, volunteers and participants. We manipulate our citizens. we do not involve them.

4. Institutions: -- If, as political scientist Ruy Teixeira has suggested, one of the principal reasons for declining turnout is decline in allegiance to the major political parties, then this too can in part, be traced to political advertising.

For, on the one hand it used to be true that candidates were nurtured by the party, trained by its leadership to state and national leadership dependent on local party organization for electoral success and beholden to the party once in office in such a way that permitted some discipline on principle and program. Now, a candidate seeks money, a pollster and a media advisor and arrives in Washington, dependent only on polls and constituent service for his continuance in office.

On the other hand, once the parties stood for some core of policy and principle. Now their advocacy, nationally and locally, is determined by the same pollsters and media advisors that run individual campaigns. The parties have become little more than campaign service agencies and both individually and collectively there is little reason for enduring citizen allegiance to either candidate or party.

This transcendance of party in favor of media consultants enhances the centrifugal force of special interest. weakens the forces of popular mobilization, both within parties and among other organizations and lessens what little stability and cohesion exists within the American political system.

5. Leadership: -- It can also be said that the current system of campaigning through consultants polls and demagogic advertising weakens the impulse to political leadership.

When once it was the business of leadership to determine what policies were right and wise and then find ways of educating the electorate to their enactment and implementation, it is now the custom to poll the electorate to find out what to say in the first place. Policy. thus is too often determined by poll rather than by principle or need.

6. Policy: -- This, in turn, has the effect of restricting policy options. Reasonable people can disagree about whether Social Security was intended as an inalienable right for all Americans and therefore should not be tampered with or whether it was intended as insurance for those less fortunate and thus can and should be either taxed or means tested. But in the face of the potential of a demagogic commercial showing a poor grandmotherly looking woman with a voice-over saying, Senator X voted to cut your mother's Social Security, the debate over Social Security's future never gets beyond a narrow range.

Similarly with regard to the recent Supreme Court decision on flag burning, while almost all Americans find the act of burning our nation's symbol foolish, extreme and abhorrent, reasonable people can disagree about whether the Court acted wisely in protecting even this extreme form of speech in order to protect the principle of free speech. But because of the demagogic potential of this issue in next year's political campaigns, the choice in public policy terms has been narrowed to legislation outlawing flag burning or a Constitutional Amendment which would have the same effect.

7. Political Choice: -- The same principles apply with regard to the political marketplace. For eight years, Richard Lamm was seen not only by the nation-at-large but by his constituents in Colorado as an able and innovative governor. After serving his legally alotted two full terms he moved to private life while in his forties. Next year, only four years his departure after from office there is a vacant Senate seat due to the impending retirement of Sen. Armstrong. Under the normal course of human events the combination of high name recognition, warm public sentiments and human ambition would have propelled Gov. Lamm into a quest for that office.

But shortly after he left the governorship, he spoke to a group about health care, the elderly and the problems of triage when Americans get old. He now faces the likelihood of a demagogic commercial showing another grandmotherly old lady and a voice-over saying, "Gov. Lamm said your mother has a duty to die." He has chosen not to run.

We, of course, do not know how many Americans capable of great leadership have chosen not to run because of something that they have once said or done might be taken out of context, used and magnified in a demagogic advertisement and served to ruin, uneccessarily their personal, professional and political reputations. But we do know, that the present system of distorted and demagogic advertisements cannot help but serve to restrict citizen choice and constrict the reservoir of political leadership.

8. Careers: -- Public service can and should be a noble profession. Elective office, while often requiring sacrifices of money, privacy and time, ought to also offer the promise of reasonable continuity unless the office-holder commits an act of moral turpitude, fails to effectively carry out his duties or if the public, which elected him or her, differs with him or her on either a major issue or general political perspective.

Before the onslaught of demagogic advertising, an office-holder could count on a reasonable degree of continuity. And the public, faced with either acts of moral turpitude (e.g. Watergate), major issues (e.g. Vietnam) or changes in mood (e.g. late 1960's and early 1970's excesses) found no difficulty expressing their view and removing those in office without the benefit of the hucksters' ministrations.

Lately, however, no office holder is safe. Because of the power of television, trivial issues can be magnified into large ones and honorable careers can be imperiled. The classic example is, of course, the ad series run by Sen. Mitch McConnell against former Sen. Walter D. Huddleston. In that set of ads, a set of bloodhounds sniffing at the end of a long leather leash for Sen. Huddleston, first on Capitol Hill, then through the woods finally finding him on the beach in Acapulco. The impression given was that here was an absentee, junketeering Senator.

We are talking however, not about an absentee, junketeering Senator, but about one who had a 95 percent attendance record, who was seen by his colleagues as hard working and who, if he had any major failing, might have been seen as lacking flash or color.

But one cannot argue with the emotive effect of a bloodhound. As Richard Nixon found out, saying I am not a crook, does not cool the emotional fires set off by other things. Nor does saying, I have a 95 percent attendance record.

It should be noted that one election later, Sen. Wendell Ford found an effective anti-dote to a McConnell-type commercial by showing a pet hound staying with him while he worked late in his office. But the fate of our leadership should not be decided by whether one's media consultant is as or more effective than the media consultant of the opposition.

A leader should be judged on his positions on issues, his character and his conduct in office. And non-incumbents should have to fashion victory the old-fashioned way. They should earn it.

9. **Accountability:** -- Conversely, icreased dependence on demagogic televised advertising which enhances the power and influence of media consultants detracts from the ability to hold office-holders accountable.

A media consultant is not by nature accountable to the electorate. He or she makes his or her living and insures his future by winning elections for the clients he or she is hired by. He or she can and does use whatever techniques and strategems are likely to benefit the candidate whether those strategies and tactics are ethical or not.

By using techniques such as actors playing parts, demagogic scene setting, impersonal voice-overs, anonymous commentators, emotional music, etc., the consultant can and increasingly frequently does establish the terms of debate in such a way that the client escapes responsibility for what is conveyed and in terms that are unanswerable by the opposition, except by resorting to precisely the same techniques.

So what has developed in these United States is a competition, not between parties, principles proposals or candidates, but between media advisors who compete with each other to see who can outslick the other and win. And in the continued absence of candidates with the courage or character to tell these consultants that they are ruining our political system and that they ought to shut up and go home, the public has no one to hold accountable.

10. **Independent Expenditures** -- Some years ago, the Supreme Court in **Buckley v. Valeo** ruled I believe rightly that organizations independent of candidate and party had a right to participate in the political dialogue. It did not however, rule that these organizations had a right to dominate the dialogue.

While not denying these independent organizations the right to participate in the debate, their participation should be in the nature of debate lest our polity be dominated not by responsible candidates and political parties, but by fringe and splinter groups with the wherewithal to buy time, place demagogic commercials and drive a dialogue away from the issues of common concern.

11. **Speech:** -- I have not in this testimony (or for that matter in anything I have said in the last ten years during which I have addressed this issue) stressed the words, "negative ads." I have made this ommission advisedly.

For in any campaign, the opponent's character, record values issue positions and advisors are all legitimate subjects for campaign debate.

But what we have been witnessing in our campaigns has been the antithesis of debate. Distortion and demagoguery have displaced debate and discussion, actors playing parts have replaced the real actors in American politics. anonymous voice-overs have replaced accountable politics, emotionalism has replaced answerability.

The issue of speech and Freedom of Speech is at the heart of what we are discussing here. I am not a Constitutional lawyer or a specialist in civil liberties law. But I yield to no one in my belief that it is our First Amendment freedoms that differentiate this democracy from all others and makes it superior.

It is, however, my belief that the framers of the First Amendment sought to promote debate rather than to undermine it. They would have, I believe encouraged the broadest set of policy options rather than campaign conduct which constricts those options. They would have encouraged the rough and tumble of debate, but they would. I believe, have wanted that debate to be joined.

Which is the point at issue. For a reasonable case can be made that the present system of unregulated political advertising on television undermines debate and the intent of the framers of the First Amendment.

I do not believe that the framers of our Constitution envisaged freedom of speech for talking cows or for actors playing Fidel Castro or for bloodhounds trailing office-holders. When we moved into the television age we took a quantum leap into technology.

For television is not simply another mode of communication. It is to conventional means of communications what nuclear weapons are to conventional weaponry. It adds a whole new and potentially destructive dimension to the issue of communications through the manipulation of emotions. And to carry the analogy one step further it may be desirable to regulate the use of conventional weaponry; it is essential to the welfare of mankind to regulate nuclear weapons. Similarly while it is probably not desirable to regulate any other means of communication in politics, it may be essential for the health of both politics and meaningful free speech to regulate political advertising on television.

The Supreme Court in its **Red Lion** decision has recognized that because of two factors -- limited access to the medium and pervassiveness of reach -- the First Amendment claims of television may be restricted to a greater degree than other mediums. The proposals being considered in this hearing are nolt designed to undercut free expression of views but rather to liberate that free expression from the cloud of image making and unanswerable demagoguery that is the current mode of communication.

Thus, whether one shares my view that the Constitutional issue of free speech cuts, in this case, in favor of regulation of the demagogic nature of the current advertising in order to protect larger concepts of speech or simply believes that the downside costs of continuing to conduct or politics in the manner we have -- in spiralling campaign costs, diminished citizen participation, eroding political institutions, constricted policy and candidate options, lack of accountability and answerability -- the case for constructive regulation is clear.

Indeed it represents a part of the fundamental issue of our age. Technology and science grow like topsy, but not all of that growth constitutes progress. The fact that children today now spend their summers freed from the fear of polio and that breast cancer is almost completely curable attests to the fact that science and technology can produce progress. The fact that our air is foul, our cities have been decaying and that the incidence of cancer increases at a rate of one percent a year bears testimony to the fact that all products of technology do not constitute progress.

The task of government is to sort out what is beneficial to society and encourage its growth and conversely to determine what may pose hazards to society and control our curtail its growth. The current ~~use~~ of paid television in politics falls into the latter category.

To put it perhaps more mundanely, in baseball we do not allow pitchers to throw balls intentionally at batters; there is something called unnecessary roughness in football; spearing in hockey hitting below the belt in boxing, etc. There seems to me to be no more important game and higher calling than politics and it too needs reasonable boundaries for its conduct.

We need quite simply to restore a degree of probity to our politics, civility to our debate, and accountability to our political process.

It is my hope that S. 999 will be reported out of this subcommittee and its parent committee favorably and that, with it as a base the full Senate will work to insure the most effective and Constitutionally defensible bill to address the issues before this hearing.

I would like to thank the committee again for inviting me and ask for the inclusion in the record what the committee deems relevant of the materials appended to this testimony and which is in the hands of committee staff.

Senator INOUYE. Thank you very much, Mr. Gans, for your presentation.

Mr. Guggenheim.

STATEMENT OF CHARLES E. GUGGENHEIM, PRESIDENT, GUGGENHEIM PRODUCTIONS, INC.

Mr. GUGGENHEIM. Mr. Chairman, I think most of what I have to say has been said today.

Perhaps the greatest contribution I can make—and I can make it very briefly—is to separate or at least define what I think may help us go forward in reforming the process of political campaigning and those things that may stop us again from making these reforms.

I have spoken out for over ten years on this subject with certain members of this committee. I have testified here three or four years ago. My views have changed only slightly so I do not want to bore you with things that I have said before or that other people have said more eloquently than I have.

I think, though, we would make a terrible mistake if we do not extract from this legislation those things that deal with value judgement and concentrate on those things which really no one testifying today, with the rare exception, disagrees with. And that is accountability.

I think we wouild be absolutely amazed how much we would improve the campaign process if we would clearly identify the person who is responsible for political ads that go on the air. And I think the Congress has the obligation and the power to clearly and specifically define that accountability.

I served as a political media advisor and producer in over 125 campaigns, and I have spent a lot of time devising ways to minimize political disclaimers. We learned very quickly that radio and television stations were not interested in fairness as much as revenues. Any disclaimer that met their minimal standards was acceptable.

We should, therefore, define and make clear for broadcasters what is a fair and proper disclaimer. We do it approved by Senator So-and-So, Senator So-and-So would think twice before he condemned, vilified or told half truths. Or, if he did not think twice, at least he would say pay the consequences.

The consequence, as it pertains to the rest of us is that the electorate is turning off. They see this cheap, endless name calling, exaggeration the vilification on television and they say a curse on both the houses.

The issue is not that negative advertising guarantees victory (interestingly enough, most of the ads we saw today supported losers.) It is that we have promoted and encouraged a process that encourages candidates to use television in a way that compromises rational dialogue and makes the electorate a cynical bystander. What is at risk here is the increasing demeaning of the political process. What is at risk here is an electorate with a diminishing respect for democratic process—with a diminishing respect for the people they elect to public office.

So I urge you to begin to make progress. Define accountability and insist on it. Do not leave it to the candidate, do not leave it to the television industry to decide what accountability is. You define what accountability is and you can. Size of name, time on the air, what will be seen, what will be heard so people who are in the business of persuasion cannot in the darkness of their editing rooms scheme to get around the intent of the law.

There are few recommendations I have heard here today that most candidates could not get around very easily. And the stations are not interested in whether one is devious or duplicitous. They are interested in tranquility. They can not and should not set standards in this instance.

Leave out as it pertains to the legislation before us the requirement that all negative television ads must be delivered by the candidate himself. Though I admit to being in motion picture contracts every day. And we can do it here.

Yes we can define and legislate the content, size and length of a disclaimer.

We can define how long it should remain on the screen, and we can specify how the visual and sound will appear.

I do not disagree with Mr. Gans and much of what he says, but I not mind as much as he does the ads he has shown us here today.

What I do mind is that the people who are responsible for them have escaped risk in putting them on the air. Therefore, I think we should set for ourselves the task of defining accountability..

I have said screen size. I have said length of time. I add to that the obligation of legislating what words audibly and visually will accompany the disclaimer. You can leave this to the discretion of the broadcast industry. They already, by default, set the process by which we campaign in the United States. It is not in the Constitution that our political dialogue must be carried on in 30 and 60 seconds. It is not in the Constitution. But broadcasters have said it must be.

What gives the broadcasting industry the right to decide that the political process will be carried on in 30 and 60 seconds? Should they set the rules or is it the obligation of the Congress to set the rules?

Is it constitutional for a radio or television station to deny a candidate three minutes instead of 30 seconds? Is it constitutional for a station to deny you five minutes rather than 60 seconds? Who is defining the process? Is it you or the broadcast industry? It's the broadcasters and I think it's time that it be you.

But let me be specific about accountability. If you legislated that at the end of every political ad you would hear and see loudly and clearly "This ad was paid for, and author to this idea, I have been persuaded that no one is going to be able to fairly define what negative advertising is. The stations are going to wash their hands of this responsibility and I wouldn't blame them. So who is responsible? Can we define negative in campaigning. I seriously doubt it. So as not to languish again on campaign reform, let us take out those things which are in question and go forward with the things that all of us agree we can do.

I am, as Senator Stevens said, for longer political ads. I believe the British have shown the way without compromising one's right to speak. I am against the 30 and 60 second political ads. I think making two minutes a minimum time for ads would dramatically change the political discourse in this country. Whether this leads us into a constitutional question I am not sure any more than I am sure if it is constitutional for the television industry to do what they are now doing—restricting the political discourse to 30 and 60 seconds.

But leaving that aside, there is much we can do and I hope you will do it. Thank you.

[The statement follows:]

STATEMENT OF CHARLES E. GUGGENHEIM

In the ten years, Americans have been forced to endure an epidemic of negative political advertising. Visual and audible manipulation abounds. Every tool of the advertising craft has been exercised to prove opponents lazy, dishonest, unpatriotic, dumb, cruel, unfeeling, unfaithful and even criminal. It takes so little skill to condemn someone on radio and television commercials that there has been a proliferation of media consultants—many carrying their wares from one state to another. Only the names on the commercials need to be changed.

As one who has been involved as a media conusltant in more than 100 elections, I do not disparage everything that has taken place since the advent of paid television in politics. There have been some fine moments. Paid political announcements have made it possible for a new breed of independent candidates to enter public life. The smoke-filled room has all but disappeared as paid television has replaced it as the forum for political choice. Party bosses have been moved to the back row. Hand-picked candidates have become an endangered species. The sins of McCarthyism, Watergate and Vietnam have far less chance of returning, knowing they face trial in the living rooms of America.

My concern is not that we have replaced one group of influence makers with another but that in making this change we have created a system of political campaigning that is eroding the dignity of the election process.

Up to 70 percent of what Americans hear and see in a political campaign today comes via 30- and 60-second paid political announcements. In 1984, candidates paid the broadcast industry more than $300 million for the privilege of discussing the issues in 60 seconds or less.

Ask any seasoned media adviser and he will tell you what he can do best given 30 seconds. Create doubt. Build fear. Exploit anxiety. Hit and run. The 30- and 60-second commercials are ready-made for the innuendo and half-truth. Because of their brevity, the audience forgives their failure to qualify, to explain, to defend.

There is another reason why our campaigns are becoming increasingly mean: the use of anonymous surrogates to deliver negative advertising. Candidates themselves do not produce commercials. Candidates leave that task to their hired media directors, who are free to craft their 30-second inquisitions in the remote darkness of their editing rooms.

Having surrogates represent office seekers is not new. Abraham Lincoln never left Springfield during the Presidential campaign of 1860. Others did his campaigning for him. But today's surrogates are different. Faceless, they craft their messages in anonymity, delivering their accusations via actors, music, special effects and photography—all without fear of personal accountability either to themselves or to the candidates who hire them.

What can be done? Strip away the anonymity of negative political advertising. Put the face and voice of the accuser on the screen and you will move in the direction of decency for the American political process overnight. Insist, also, that paid political announcements be no fewer than two minutes in length—and you will see a dramatic change in the tone of the political dialogue in this country.

Political campaigning in America has never been free of rancor and unfairness. We should not attempt to purify the system, nor should we interfere in the public dialogue. But Government has an obligation to establish processes that do not encourage the demeaning of the political process.

In Britain, commercial broadcasters do not make the rules—a forum of British subjects does. In two British elections in which I took part, paid political broadcasts were confined to 10 minutes in length. Stations were required to provide prime time—free. No advocacy broadcasts could begin prior to three weeks before the election.

The British system may in some ways be too restrictive. But we have a lot to learn from it. The rules in Britain allow room for substance, give range to criticism, discourage unfairness. Equally important, the British provide something Americans seldom if ever do—more than 60 seconds for political advocacy in prime time.

There are many complications, perhaps risks, surrounding suggestions for reforming the present system. The First Amendment is a precious document and it should not be tinkered with. But we have already placed arbitrary restrictions on self-expression in this country by allowing the broadcast industry to set ground rules that frequently stifle substance and encourage specious attacks. The First Amendment was intended to protect individuals who wished to speak for themselves, not individuals who hire others to hide in the wings and speak for them.

By accepting the status quo, Government has not avoided interference in the democratic process. It has merely abdicated its responsibility to an arbitrary system that brings little distinction to the political process and the American people.

Senator INOUYE. Thank you very much, Mr. Guggenheim, for your suggestions. I think they are worthy of very serious thought and should be incorporated in our debate here. Thank you very much.

Mr. Squier.

STATEMENT OF BOB SQUIER, ESKEW COMMUNICATIONS

Mr. SQUIER. Mr. Chairman, I too agree very much with what Mr. Guggenheim has said this morning, so I will limit things. Maybe just to sort of comment on some of the things said here this morning, I think Mr. Gans believes that voters do not like negative advertising, and I think that voters did not like this negative advertising we saw because these ads were almost all done for losing candidates.

I think, however, voters make very good use of negative advertising when it is advertising that has information inside the ad, and if you get into a debate between this 30-second spot and this 30-second spot in a campaign, often you are going to out of that heat, out of that heated exchange between those spots get what amounts to just about the only real political debate that you are going to see in the campaign.

I think all of us here would like to see more lively debate in campaigns, but the fact is year after year after year we are basically through practice almost eliminating debate from our discourse. We do not see any debate on television. We have not seen a real political debate on television in any campaign since Charles and I have probably been in this business. I have been at it 20 years, and he was the king when we came in.

I think that what you get instead are sort of joint appearances by candidates, and those appearances are purposely organized so that there is no opportunity or real exchange between the candidates in front of the television cameras. And so as a result, what we are left with are these 30-second spots in order to perform what I think is the most important transaction of a campaign, which is some real debate about the issues.

Senator Hollings, with great respect, I disagree with you about the advantage of incumbents. We have had the honor to work for both incumbents and challengers, and I think the balance is almost always, especially in Senate races, on the side of the incumbent, and against the challenger especially in the problem of fundraising.

And one of the things I would hope is that eventually we will be able to attack this problem of funding of campaigns because it seems to me that what we ought to do is not try to attack this problem on the speech side of the equation, but instead try to attack it on the supply side of the equation and that means in dollars.

I am embarrassed to speak against something called the Clean Campaign Act, and so in my mind, I refer to it as the act to produce a permanent Congress, and that makes me feel a little bit better about being here this morning.

The only other thing I can add to what has been said is the last reflections that were made by Senator McConnell, I think, bear some expansion. He talked about candidates who might be not able to perform the act of attacking an opponent or responding to an attack by an opponent.

It seems to me it would be very simple in a campaign if you know that your candidate is a polished public speaker, maybe even a professional announcer, and you know that if you attack your opponent and your opponent may be—might stutter, for instance, or your opponent may have difficulty in terms of an accent or with language, it might be very easy to draw your opponent into commercials defending himself just because you had made an attack and they were forced to actually appear on the air if they wanted to respond to that attack, and I should say by the way, I am not against announcers coming to the United States Senate.

The announcer we have used for 20 years, Larry Lumin, would make a fine Senator. I think he probably could not afford to work here, but he would do a good job should he come.

Finally, I would say in conclusion, I am always nervous about reform of this political process because of what we have been left by the reforms of the past. Many people who are, I think, very much for this legislation were people who were for the legislation that created the political action committees in the first place.

I think one of the worst things that we have done in this process is to create these independent committees that can make these kind of kamikaze attacks on candidates from completely outside the process without accountability, and I think it would be very useful if the Congress could in their wisdom find a way to deal with that problem and deal with it effectively.

I would in conclusion say that Charles has hit exactly upon what I think would be the best thing this committee could do which would be to simply find a way to really deal with accountability.

The fact is when we do a non-use commercial, which is a commercial that does not have the candidate in it, we must, of course, put the candidate's face in the commercial, and we just say who sponsored the commercial. There is accountability.

But, what we are involved in is microscopic accountability. I would love to take you into a control room and show you how we actually get those pictures of you down to that size so that people can see them on the screen. That is quite a process. I mean, it is difficult to take an eight by ten photograph and reduce it to the size of the head of a pin, but we do that in campaigns, and all you have to do is as Charles has suggested, is simply say those pictures of candidates in negative ads and all ads for that matter that are non-use ads have to be of a certain size. And that is very simple, very simple indeed to prescribe.

I am glad you are working on the problem of cleaning up campaigns. I hope we succeed in cleaning them up and not making them worse.

Senator EXON. Thank you very much, Mr. Squier.

Mr. Lynn.

STATEMENT OF BARRY LYNN, LEGISLATIVE COUNSEL, AMERICAN CIVIL LIBERTIES UNION

Mr. LYNN. Thank you. I do feel compelled to make one preliminary observation. That is even demeaning advertisements and idiotic campaign mistakes are still entitled to protection under the United States Constitution's First Amendment.

There is no doubt that the integrity of the political process is an important issue even for civil libertarians, but the ACLU remains concerned that when we get into the business of helping to reform federal elections, those reforms may be attempted in ways that are going to sacrifice other important constitutional values.

We see very serious problems in both of the pieces of legislation before you believing that they will end up impeding political advocacy and campaigning in ways that violate not only the guarantees of the First Amendment to free expression, but also the right of association.

For example, S. 999 moves in our view in several undesirable directions. The bill is really an effort to censor political speech by generating extra cost and imposing de facto penalties on candidates who choose to campaign in a way which Congress deems too negative or too unclean.

It mandates that if a candidate wants the privileges and benefits of the Communications Act, then he or she must agree that any reference to a opponents will be made personally. In other words, a candidate who merely wants to acknowledge the existence of an opponent must do so him or herself.

He must state or she must state that that opponent is inadequate or unqualified or inept or has the moral scruples of Attila the Hun. It is not permission for a Hollywood actor to do it or a member of the candidate's family to do it or even a person who lives in the electoral district to do it.

These nonpersonal references to opponents are viewed by the statute as unclean.

Now, there may certainly be a difference of opinion as there is at this table about the propriety of surrogate criticism of opponents, but in our view it is not constitutionally acceptable for the Congress to make such a decision on the propriety of these ads to declare some of them a form of social disease and then condition benefits according to that decision.

It is quite conceivable that a challenger in a federal election will not simply wish to have him or herself identified as the challenger. He or she may also want members of the incumbent's various possible constituencies to blast the incumbent. That is reasonable.

A political advertisement which features a white person criticizing an incumbent's support of job quotas, an elderly person attacking the incumbent's view of social security or an environmentalist decrying the incumbent's concern for clean air could be a very effective, wise, and useful advertisement, even if the opponent never uttered a sound him or herself.

Now, that should be a free choice unimpeded by any action of Congress involving penalties or disincentives, and we also cannot help but believe that it is also more likely for a challenger who engages in the use of these advertisements discouraged by this bill under the present system that this, therefore, would create a disparate impact in favor of incumbents if the bill were, in fact, enacted.

After all, there are plenty of incumbents who do not even with to acknowledge that there is an opponent much less say anything about his or her views, and I suspect, Senator Pressler, if you go back to the broadcasters of South Dakota, you will hear from them some other problem here, and that is that television or radio stations are going to be disinclined to accept any advertisement such as that white man or elderly person or environmentalist ad that I have just described because to do so would be trigger other requirements of the bill that the licensee would be required to provide to the candidate to whom reference was made the opportunity to use without charge the same amount of time as used by the original candidate, and I do not claim to be a broadcasting guru, but I do not think you need to be one to recognize that a licensee faced with the demand to give precisely equivalent free time to the second candidate even accepts a negative ad from the first one is going to be disinclined to accept the first one. It could simply prove too costly.

And so, in the many markets I would predict that that white elderly environmentalist set of ads would sit in film canisters for the entire campaign.

Now, there is no question that the federal government can condition the receipt of federal funds on certain acts of the beneficiaries. It is perfectly permissible in our Constitution to condition the receipt of, say, federal education dollars on removing asbestos from school ceilings, but conditions which restrict First Amendment interest are subject to far greater constitutional scrutiny.

Benefits or access right in the Communications Act, like low-cost advertising, does not permit the government to condition the receipt on the content of the advertisement, and that is clearly what this legislation does. Restriction through the imposition of penalties on political speech or the content, the way in which it is uttered strikes at what is unquestionably the core value protected by the First Amendment.

Indeed, a number of restrictions on the form of speech for purely commercial ventures have been declared unconstitutional. This is far from that commercial speech, has all kinds of interest in preserving and protecting public health. Those are not applicable in the political context.

Fraud and deception may occur in the political process, but then it must be handled by the political process and not by outside regulation.

Those ads that we saw, I do not think that KKK ad ran more than once. I am not even sure it ran once because people who saw it in all parties were appalled. The political system took care of that ad.

When Senator Sasser was attacked with the Castro ad, it was, I think, widely seen as the reason why Robin Beard is not in the Senate today, because there was an enormous public reaction against the use of that image. Perhaps American voters are smarter than Mr. Gans would suggest.

It is also constitutionally forbidden to withhold favorable broadcast rates based upon content or to impose a kind of trigger-free equivalent time, and the trigger in this bill is a particularly pernicious kind because it triggers aid to persons attempting to defeat the candidate, and that is not dissimilar to a variety of objectionable practices that were rejected by the Supreme Court in other cases involving compelled speech which turned out to be antithetical to the interest of the original speaker.

This bill also would, in our view, unconstitutionally regulate the ability of independent groups, particularly political action committees from contributing to campaign debates by using the broadcast media. This, too, would have the effect of discouraging the acceptance of original ads from a political action committee because the broadcaster would be fully aware that it would trigger one or perhaps more candidates to demand and to receive free, not an opportunity to pay for it, but free response time.

Let me just in summary in conclusion to the second piece of legislation before you, I think that has got some constitutional problems as well. The Political Broadcasting Disclosure Act includes mandatory disclosures during the broadcast of what I believe is still undefined political matter.

The Supreme Court in the case two years ago involving North Carolina charitable solicitations said, and I quote, "Mandating speech that a speaker would not otherwise make necessarily alters the content of the speech.

And such disclosures, as we have heard mentioned this morning, might communicate to viewers that they should be more suspicious of the contents of broadcast that have these disclaimers running along the bottom, and I am not sure that that is universally should be viewed as a positive development.

The second danger is that individuals may be inhibited in their willingness to sponsor political advertisements if their identity is so readily known. I recognize that there is some legitimate governmental interest in disclosures of large contributors in political contests, but a blanket requirement of disclosure as extensive as the one in Senator Bryan's bill would probably prove to be too great an inhibition on the rights of anonymity and the rights of association.

So, for those reasons we would urge modifications in both of these bills before they are acted upon by this committee or by the full Senate.

[The statement follows:]

Testimony of Barry W. Lynn, American Civil Liberties Union Regarding Regulation of Political Advertising

Mr. Chairman and Members of the Subcommittee:

My name is Barry W. Lynn and I serve as legislative counsel for the American Civil Liberties Union (ACLU). The ACLU is a national non-partisan membership organization, with approximately 275,000 members, dedicated to the enforcement and enhancement of the values embodied in the Bill of Rights and other constitutional guarantees.

There is no doubt that the election of public officials is an essential aspect of a free society and that the integrity of the electoral process is a principal civil liberties interest. At the same time, the ACLU is concerned that election campaign reforms may be attempted in ways that sacrifice other consitutional principles. For example, the freedom of expression guaranteed by the First Amendment can be hampered by excessive restrictions which disrupt the flow of political activity. In our opinion, both S.999, the "Clean Campaign Act of 1989,"and S.____. the "Political Broadcasting Disclosure Act of 1989," may impede political advocacy and campaigning in ways which violate constitutional guarantees of free expression and the right of association.

ACLU Philosophy on Broadcasting in Political Campaigns

In the view of the ACLU, all broadcast licensees and cable franchise holders have an affirmative obligation to provide an opportunity to candidates for public office to communicate with their constituencies. In both primary and general elections, broadcasters and cable operators should make available reasonable amounts of equivalent free time to all legally qualified candidates for federal and state-wide offices. Use of the free time is to be controlled by the candidate, and the content should not be subject to censorship by the broadcaster or cable operator. Moreover, while broadcasters and cable operators are not required to satisfy all commercial demands by candidates, they should make available for purchase to candidates legally qualified for the office for which they are running reasonable amounts of commercial time. If one candidate for an office is permitted to purchase advertising time, then all candidates for that office must be afforded the opportunity to purchase an equal amount of time, in equivalent periods, at the same commercial rate. All political candidates should be charged the lowest commercial rate for the time periods they are seeking to purchase.

We also support the thrust of such FCC policies as those embodied in the "personal attack" rule and the so-called "Zapple rule." When individuals are attacked during a discussion of a controversial issue of public importance-other than in news programming-it serves a First Amendment interest in vigorous public debate to provide reasonable access for the individual attacked to respond. It would go too far, however, to require that broadcasters seek out persons who have been attacked to notify them of the occurrence. Likewise, in Zapple, if supporters of one candidate are given or sold airtime by a station, other qualified candidates for the same office are entitled to claim reply time. It would be excessive regulation, however, to mandate that candidates all be given free time in precise equivalency to time purchased by other candidates.

S.999

Since the ACLU takes the position that some broadcast requirements are permissible and even desirable under the First Amendment (because of the "public-interest" standard attached to receipt of a broadcast license), some clarification of ambiguities or deficiencies in current electoral broadcast regulation is warranted. Unfortunately, S.999, in our view, moves in several dangerous and undesirable directions.

Section 2(b)(1) proscribes a candidate for Federal office "who utilizes rights of access and conditions of access" under the Communications Act from referring "directly or indirectly, to another legally qualified candidate for that office" except by making such reference "in person." In other words, a candidate wishing to acknowledge the existence of an opponent must do so personally. For example, a candidate must state himself of herself that the opponent is inadequate, unqualified, inept or has the moral scruples of Attila the Hun. It is not permissible that the candidate's family say it; that a Hollywood actor say it; or even that a person who lives in the electoral district say it. By implication of the very title of S.999-the "Clean Campaign Act of 1989"- any non-personal references to opponents are "unclean".

Obviously, there may be a difference of opinion as to the propriety of surrogate criticism of opponents. It is not, however, constitutionally permissible for Congress to make a decision on such propriety and then condition benefits according to such decision. This effectively penalizes the individual who chooses to campaign in certain ways. Surely, it is quite conceivable that a challenger in a Federal election will not simply wish to have himself or herself identified as the challenger. He or she may also want members of the incumbent's various possible constituencies to lambast the incumbent. A political advertisement which features a white person criticizing the incumbent's support of quotas, an elderly person attacking the incumbent's view of social security, or an environmentalist decrying the incumbent's concern for clean air could be a very effective advertisement, even if the opponent never uttered a sound. That should be a free choice of the candidate unimpeded by the substantial penalties and disincentives which would be generated under S.999. We cannot help but believe that it is also more likely to be a non-incumbent who engages in the use of advertisements discouraged by S.999, thus creating a disparate impact in favor of incumbents were this bill to be adopted.

A television or radio station would be disinclined to accept any advertisement such as the "white-elderly-environmentalist" described above. To do so would trigger the requirements of 2(b)(2). The licensee would be required to provide to "the candidate to whom reference was made the opportunity to use, without charge, the same amount of time on such broadcasting station, during the same period of the day, as was used" by the original candidate. One does not have to be a broadcasting guru to recognize that a licensee faced with the demand to give precisely equivalent free time to the second candidate if it accepts a "negative" ad from the first may be unwilling to accept the first. It could prove too costly. So in many markets it is predictable that the "white-elderly-environmentalist" ads will sit in a film canister for the entire campaign.

Again, the ACLU has absolutely no problem with any FCC regulation or statutory requirement that any time one candidate is sold time for a commercial, the opportunity to purchase time must also be accorded to other candidates. However, the First Amendment does not require that licensees give away precisely equivalent free time, nor does it permit a statute which conditions receipt of free time on the content of the original advertisement.

There is no doubt that the federal government can sometimes condition the receipt of federal benefits on certain acts of the beneficiaries. For example, it is perfectly permissible to condition receipt of federal education dollars on removal of asbestos from school ceilings However, conditions which restrict First Amendment interests are subject to far greater scrutiny The major "benefit" or "access right" in the Communications Act is low cost advertising. (Section 315 (b)), but the government is not entitled to condition this receipt on the content of the advertisement.

Restriction through imposition of penalties on political speech strikes at the unquestioned core of First Amendment values. Political advertising is pure speech, not even commercial speech which courts acknowledge has a slightly lower, but still significant, level of protection. These advertisements offer not goods and services, but robust debate on the candidates and policies which shape the nation. It expresses opinions and recommends partisan action on political issues. The concerns behind regulation of commercial speech do not apply to political advertising. Commercial speech is regulated to protect the public from fraud and deception and to safeguard the public health and safety. Health and safety concerns are inapplicable in the political arena, and while fraud and deception may occur, the political process itself, rather than outside regulation, is the only constitutional means of redress.

S. 999 seeks to shape the form and content of political speech in a manner that is wholly inappropriate and unconstitutional. Indeed, a number of restrictions on the form of speech for purely commercial products have been invalidated by the Supreme Court. For example, In Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626 (1985), the Court struck down a rule barring lawyers from advertising with pictures, rejecting a general theory that visual content of advertising is inherently deceptive or manipulative. Therefore, in the case of campaign advertising, it is not likely that the Court would accept the theory that use of surrogates, rather than the candidates themselves in referring to opposing candidates, is deceptive or misleading and thus justifies the penalties and disincentives of S.999.

Even where the government is granting a direct subsidy to a class of speech, it is not permitted to make content decisions adversely affecting only some in the class. In the postal context, the Supreme Court has specifically ruled that once the government made second-class postal rates applicable to periodical publications, it could not withhold that subsidy from a magazine whose contents were disfavored. Hannegan v. Esquire, Inc., 327 U.S. 146 (1946).

It would be constitutionally forbidden to withhold favorable broadcast rates based on content, or to impose the "trigger" of free equivalent time. What (b)(2) represents is a penalty on a candidate asserting his First Amendment right to engage in unrestricted speech, a penalty of a particularly pernicious variety because it triggers aid to persons attempting to defeat the candidate. This is not dissimilar to the objectionable practices renounced by the Supreme Court in other cases involving compelled speech which was inimical to the interests of the speaker. See e.g., Miami Herald Publishing Company v. Tornillo, 418 U.S. 241 (1974) (declared unconstitutional statute which required that newspaper which made critical comments about candidate provide space for candidate's reply); Pacific Gas and Electric v. Public Utilities Comm'n of Calif., 475 U.S. 1 (1986) (public utility cannot be required to insert materials produced by ratepayers which oppose the utility's policies in their mailings). Thus, section (b)(2) requires a candidate to choose a potentially less-effective means of campaigning to avoid triggering free air time for opponents. This certainly represents a chill on aggressive political advocacy.

S.999 will also unconstitutionally limit the ability of independent groups, particularly Political Action Committees, from contributing to campaigns by using broadcast advertising to urge support or defeat of a candidate. Under S.999, if a PAC independently airs an endorsement which refers directly or indirectly to an opponent, the opponent is entitled to free, equivalent airtime. Thus, independent expenditures by a PAC, in airing an advertisement over which the endorsed candidate has no control, may trigger free broadcast time for opponents. Of course, some PACs will be reluctant to make independent expenditures for advertisements knowing that such expenditures will trigger free advertisement time for opponents. In addition, PACs will have difficulty finding licensees who will air their advertisements if doing so will require the broadcaster to provide equivalent free time to another candidate. Thus, S.999 also places a chill on aggressive advocacy for candidates by PACs.

Political Broadcasting Disclosure Act of 1989

We also see grave constitutional problems in S._____, the

"Political Broadcasting Disclosure Act of 1989" insofar as it (a) alters the message which political advertisers wish to communicate and (b) imposes potentially chilling disclosures on political activists.

This legislative proposal includes mandatory disclosures during the broadcast of undefined "political matter" of the individuals or groups responsible for the advertisements. As the Supreme Court noted in Riley v. National Federation of the Blind 108 S.C.t. 2667 (1988): "Mandating speech that a speaker would not otherwise make necessarily alters the content of the speech." Such disclosures may even communicate to viewers that they should be more "suspicious" of its contents than those of other broadcasts.

The second danger is that some individuals may be inhibited in their willingness to sponsor political advertisements if their identity is readily known. Although we recognize that there is some legitimate governmental interest in disclosures of large contributors in electoral contests, a blanket requirement of disclosure as extensive as the one here would be too great an inhibition on rights of anonymity and association.

Senator INOUYE. Thank you very much, Mr. Lynn. I am not a constitutional lawyer, and apparently you are.

What do you think of Mr. Guggenheim's suggestion that this bill would do away with any restriction on content but simply state that there shall be disclaimer or an accountability portion, no less than five seconds with the following words on full screen, "The following ad has been approved and authorized by me and paid for by so and so," and it stays there for five seconds?

Mr. LYNN. Well, the question——

Senator INOUYE. And then you can put any crud you want to after that.

Mr. LYNN. Well, I would think that if the disclaimer was completely nonpejorative, that it did not suggest that there was anything wrong with an advertisement that was appearing for that reason. That would be very helpful and also perhaps if the disclaimer were required only when the people paying for the advertisement had reached some dollar figure so that it would still be possible for persons who were contributing a small amount to your or any other person's campaign but would like to keep that anonymous might still be entitled to do so.

Of course, if they had not cleared it with you, if a truly independent group wished to campaign on your behalf, then what would the disclaimer say?

Senator INOUYE. That the following commercial has not been authorized and approved by me, but has been paid for by so and so. Is there anything wrong with that?

Mr. LYNN. Well, on the flip side of that, although I would like to give it more thought, I think that it does carry a connotation that is extremely negative that somehow because most people in America do not understand the nuances of the political campaign system, many people running for office do not understand it.

I think they might view that as some kind of a warning that this is not trustworthy, that this is not desirable, that this should be discounted, and I am afraid that is not the message that should be communicated so that, frankly, still troubles me.

Senator INOUYE. Are you concerned about the statistics that Mr. Gans has put out about the somehow strange correlation between greater spending and less turnout or is that something that we should be not concerned with?

Mr. LYNN. Well, the ACLU, as some of the members of this committee know, is in the forefront of those groups that are working for more involvement of groups in political campaigns and more active and easier ability for voter registration, and so we want that participation, but I am unconvinced, and I would be happy to look at the full details that this connection is a clear correlation.

I think there are plenty of Americans that we all talk to that recognize that they don't see a difference between candidates. They don't like either candidate, and they choose to vote by staying home. Should we be concerned about that? Yes. Should we find candidates that appeal to more people? Probably yes. But should we restrict the right of people to speak in a certain way because of low voter turnout? I do not think that is something the Constitution would permit.

Senator INOUYE. Senator Hollings.

The CHAIRMAN. Well, each of you four have done a valuable service for the Committee. Mr. Lynn, it is not the censorship of political speech. It is the identity or identification of political speech. We are not censoring any content, and when you come to the extreme about the rights of anonymity in broadcast, I think you have gone far afield.

The airwaves belong to the public under the Red Lion case, Congress, and under the Constitution, of course, by the Supreme Court. We can control those airwaves, and if we cannot have any accountability; just charges and names and scurrilous and frightful and deceptive and half-truth kind of stuff appearing on the airwaves cannot be made accountable.

We do not want to stop it. Go ahead, put on the half-truth and then let the opponent come up and clear it up. But show who has done it. We are not going all the way, and I do not know that anybody would agree with that rate of anonymity.

I am really interested in two things, one by my friend Mr. Guggenheim on how we define accountability, but let me first before I come back to that, if you do not mind, Mr. Chairman, get to this incumbency or the permanent congress.

The reason I called it nonsense was the facts do not belie—our colleague, Senator McCain, says that he looked at the last election and he runs a touchdown with the 98 percent figure. If he wants to do that, then let us take that one election and say every vice president is bound to be elected president. Of course, we know that this is the first time in 150 years, but if we use his mathematical analysis, then every vice president can be counted on to be voted into the presidency.

That is not the case at all. You look behind the figures. You find out it was somewhat of an off year.

There was a tremendous amount of cynicism and incidentally, you have attributed ignorance to the voter by Mr. Gans. Mr. Gans did not say that at all. He agrees with you. The voters are smart, and being smart, they turn cynical. And turning cynical, they do not come out.

I mean, you disregard, Mr. Lynn, the chain of really what is occurring. We know that over on the House side where there were 12 vacancies, where 12 Democrats just got out, so there was not any incumbent, only a Republican only replaced in one instance. Eleven other instances, again, a nonincumbent Democrat was elected.

And we know, as I said, during the last almost 9 years 56 percent of the House has been replaced with new faces, and we just had here today all of these fellows testifying who beat incumbents here in the last few short years. No, no, no, that mail and everything else. I used the newsletter to answer the mail. I wish I was not getting the mail on abortion.

If you want to go back and you think I have got an advantage, I have got a disadvantage. I have got to answer all kinds of mail about the environment and many other tough issues. The tasks are very difficult.

It is you, the media experts, who have taught me the advantage of the challenge. You do not want to really make reference because you never can know how it will read in the newspapers or be covered. But let us go directly to the selection by you media consultants of the vice presidential candidate last November.

Now, we all know that our friend, Danny Quayle, is very intelligent and very attractive, and he is in the right age group and everything else, and I will never forget at the time of the fall election just talking from experience, I was traveling in the Far East and whether it was the President of Korea and Taiwan and down, they finally got around to the question after we broke the ice and got into a lot of things, they wanted to talk about that presidential campaign.

And they would say, but, Senator, why not Mr. Lugar? There was his counterpart from the very same state, far more incumbent is the answer. He had been the mayor and head of the mayors. He had been Chairman of the Foreign Relations Committee. He had voted many times on tough issues. With Quayle you did not have a particular record to attack and none was ever attacked on the Senatorial record.

He was attractive, he had the title as a Senator and the age group, and Ailes and Teeter and you folks, the experts, chose him because of just that. He was an incumbent. You failed coming up here, really misleading the electorate. That thing started with Gingrich over on the House side about this incumbency and the permanent congress now everybody has picked up the chant. That is not the fact.

I can tell you if you were in office, you are in jeopardy today, and if you are out and you are honest and attractive and making a living, and particularly in a business and you have got three little kids and you can show yourself out with the Little League team and all of those kinds of things that the voter is going to take you and you know that because you are depicted raising money specifically.

Man, I tried, I put on telephone banks, I got over $12,000, the highest I got, way more than Senator Thurmond, of anybody else in the history of my state because I put on telephone banks. But you cannot get the money. The Republicans have got the Eagles Clubs and they zoomed in a billion bucks.

What are you talking about incumbents can raise money. You have got to look in behind the raising of money. There is no better friend or one I respect more, and I have stated it before, Roger Milliken. He is a Republican. He says no, I cannot give you any money. I just do not give to Democrats. That is the majority of the financial leadership of my state.

And so while I am an incumbent, that is why I had to put on the telephone bank. I think—why do you think? This is not for the incumbent. this is not for the challenger. They are treated equally.

This is a voters' bill, as I see it, Mr. Squier. Elaborate. Why do you think the incumbent has got the advantage and why would this give him an increased advantage?

Mr. SQUIER. First of all, I would like to clear up one thing for the record. I would hate to have my grandchild read the Congressional Record some day and discover that his grandfather had picked Dan Quayle as Vice President of the United States. I did not do that, sir.

If I could have chosen the vice presidential candidate for the Republican Party, he would have been my choice.

In terms of incumbency, I am just going from our own experience of 20 years of doing campaigns for people who were in office and people who are challenging office holders, and that is not just Senate, but obviously in governors 'races and races for President as well.

And in our experience, incumbents have an enormous advantage, and that advantage is principally in their ability to raise money.

And I think one thing——

The CHAIRMAN. Let us fix that. How does this bill affect the raising of money. I do not mind getting off on other subjects, but let us hold right into this particular bill identifying or make it accountable, as Mr. Guggenheim has said, and the others all agree, these particular campaigns.

Mr. SQUIER. What I am saying is incumbents have an advantage, and the advantage is money. This bill does not affect, it seems to me, that particular advantage, but what it does is gives the incumbent still another advantage. He is the example of the three Senators sitting here at this table this morning, all being new United States Senators.

I would make the argument that they are there because we have not tilted too far yet over on the side of incumbency. I think there is a tilt for incumbents, but I do not think we have gotten to the point where we have reached the point where we are going to have a permanent congress.

The **Chairman**. Do you think this tilts it?

Mr. **Squier**. Absolutely. There is no doubt in my mind.

The **Chairman**. How does it tilt it?

Mr. **Squier**. Because what it does it legislate the content of speech and political campaigns.

The **Chairman**. It identifies the individual. If I am running and I am the incumbent, I have got the same duty as the other. I do not see how you can be more fair than that. It really is for the voters, so the voters can be helped, and we know because you and I believe everybody else would agree George Bush never appeared in those Willy Horton ads. In fact, the Chairman of the Republican Party, Lee Atwater, he wanted to get so disassociated and away from it he said, "Well, I did not even know Willie Horton was black."

Anybody who believes that, of course, go right ahead. But they do not want to be associated with those negative things. That fixes the responsibility and therein is what we are trying to do, maintain the integrity and credibility of the process, the process itself, by having that accountability, and that relates to both.

I do not see how that helps the incumbent.

Mr. **Squier**. I think that what we are saying here is that we are four fixing responsibility, and I think that Mr. Guggenheim has suggested a way where you could do that without legislating the content of political speech, and our worry is—at least let me speak only for myself—my worry is that when you begin to talk about how a political message is going to be delivered, are you going to do it yourself, for instance?

When this candidate is speaking out against his opponent and he holds up the voting record of the opponent, am I allowed to cut to the voting record of the opponent full screen and show it? Or will I have violated your law because the candidate is not on the screen for the entire commercial? Can the candidate voice over his commercial? And I can show pictures on the screen? In other words, can I use his voice and not his picture or do I have to use his face and his voice.

I mean, Charles is right. We sat in the back of the room and independently figured out nine ways to get around this bill before the hearing was over but the fact is that I think our worry is that you're going at the problem of political speech rather than accountability and we think that there is a way to get at accountability by simply putting a disclaimer on the screen that is clear enough so that it can be read.

And if you want to put the picture of the candidate who has sponsored it with it, if you would like to put his picture in that five seconds, that is perfectly all right.

And, by the way, Senator Inouye, I would suggest you put it at the end of the commercial and not at the beginning because then people who understand who was responsible for what they had just seen.

One of the ways we used to hide disclaimers before they caught up with us was we would have a cutaway of people applauding. In that shot you can drop the disclaimer in because you cannot see it at all because it is just a crowd of people, and then they made us put disclaimers at the front and end of commercials and legislated them a little bit bigger.

There is no problem with your doing this. This has been done. There has been reform on disclaimers already. I think you could just do a more clear reform and suddenly you would find that you would get accountability.

The CHAIRMAN. Well, my idea was I thought that just the general requirement, the nebulous requirement, I can see what you are saying. I never intended you had to stand up there for the entire 30 seconds or whatever it is, and I would go right then to Mr. Guggenheim and you were going to use you two and see how we can figure out how you can still use graft like you say or go to the record or show anything on the record.

We are trying to be reasonable. We are trying to be realistic, and I can see why you put it on the end because I just read an article yesterday morning in regular commercial advertising, people with a muter. If the article itself or advertiser appears in the very first instance, people are muting these things now, so you've got to sneak up even in a 30-second ad to get them to watch it so they will not mute it or cut it out, and so I will just hold up on my time.

Charles, how are you going to do it? When you say define what accountability is, I mean, I would watch as the ACLU is watching then the content. You see, that is what we did not want to do. I do not think content making accountable or pairing has anything to do.

We do not want to affect the content you can put on. The—you with the Klan or you with the whale in the House or you with any of those ads, just put you in it. And when I begin to define it, then I am fearful that I might be defining content, and that is what we do not want to do.

I will have to agree that I cannot do that. I am just trying to do what the law and the Constitution has already found able to do and must be done under Section 317, who has paid for it, who is accountable for this. How do I do that?

Mr. GUGGENHEIM. Specifically?

The CHAIRMAN. Yes. I did not want to specify because I thought I would not then get into the content. But when I start to specify, yes, specifically I start to get into content, do I not?

Mr. GUGGENHEIM. In a sense you could theoretically say you have already specified, the industry has already specified. It is specified by being nonaccountable.

The CHAIRMAN. Let us agree there, then.

Mr. GUGGENHEIM. And what is happening is I think it is very difficult for us to understand what kind of abstract phenomena is taking place with television. And it is something new to us because we always understood someone speaking up and talking.

We could go to debates in the 1860s and see Lincoln and Douglas. We could read newspaper articles and we knew who owned the newspaper. We knew their position before, we knew who the editor was. We had those things.

Now, what has happened is we have this surrogate. Bob Squier and I. He is in the industry still. I am not, but we were surrogates. We in a sense were speaking for the candidate, and we knew when we put our ads on television that people would somehow not attach the message to the person who was responsible for it. That is a new phenomenon, and it is one we have a difficult time coming to terms with.

I think we have to—it is not a matter of constitutional theory because in a sense we have already abrogated responsibility when we do nothing. And, therefore, we have to do something which in a sense defines who is responsible for the free speech.

The Constitution does not say. The Constitution says a person can say what he wants when he wants to say it except with the fire analogy and so forth. But right now there is a trick going on, and it has come in through the invention of electronics, and that is a message is out there. It belongs to somebody, but it does not belong to the man who is responsible for it. And we have got to come to terms with that.

Now, specifically, Senator Hollings, the thing we have to do and I find it would be very easy to do, not that I have not given it a lot of thought, but I think I could say that it should contain at least 50 percent of the screen area, the message.

And the message should be written, and it should be spoken and, as Bob says, maybe the picture of the candidate should be there, too.

This message has been paid for and approved by Senator or Congressman or Governor so and so. One you know it is approved, that he is responsible, I think you have got it. I may be wrong, but I think it is a giant step.

The CHAIRMAN. Well, I would just both you and Mr. Squier the best of experts to just complete—if a bill of this order passes, we think accountability should be defined in the statute as follows, and you both complete that for the committee because we need your advice on that on how to do it.

Thank you both very much. All four of you, really.

Senator INOUYE. Senator Danforth.

Senator DANFORTH. Mr. Chairman, I think this has been one of the best panels I have heard on any legislation, and I appreciate everyone participating in this, and some have not been as warm as I would like to S. 999.

Charles, I still think it is as good an idea as it was four years ago when you first thought it up. I join Senator Hollings in asking for the advice of experts. I think S. 999 is a good idea, but let us assume that it is so controversial that it will not pass. Then let us do something. Then I take it there is a consensus that better accountability is something, and it is worth doing.

And so I think that we should address ourselves to the specifics. How do we accomplish that. Do we accomplish that by half the screen? Do we accomplish that by the candidate's face? Do we accomplish that by the candidate's voice? How do you do it? How do we improve the disclaimer I guess is the question that is before us, and I join Senator Hollings in asking you and others who are or have been or are interested in this business to come forward for the record with specific suggestions on how we can accomplish that objective.

Now, Charles, you mentioned the length of political commercials. Mr. Squier, I do not remember whether you spoke about the length of commercials, but I know you were nodding your head in approval when Charles Guggenheim talked about the length of commercials, and I would like each of you to comment on the question of length, to comment on the question of what, if anything, you believe we should do or could do about the length of political commercials and why you think that that's important and what you think it would accomplish.

You brought it up, Charles, if you could start.

Mr. GUGGENHEIM. I have gone over in my own mind how I could explain how making a commercial longer would improve the process. It is difficult because there is a phenomenon in making these things that is attached to what the public expects when they see them, and these are abstractions, but let me explain what I think happens here.

I think my opinion is also in a sense influenced by my experience in two British elections where a committee appears, decides the election will be carried in a certain length of time. When I was—the two elections I was in, we were allowed ten minutes, a minimum of ten minutes, a maximum of ten minutes, a ten-minute period of time. We were allowed five announcements lasting no more than three weeks.

I am not asking that you adopt that, but I was struck when those announcements became longer. It was much more difficult to be superficial, to be mean, to—it allowed you to hit and run. It allowed you innuendo. You were not in a sense criticized by being superficial, by being brief, by being—by not qualifying. You were not expected to do anything more because you knew the announcement was only 30 seconds.

It was almost like opening a door of a friend's house or an enemy's house and saying you are a terrible person and you have done this and you slammed the door and walk away. It is just what the 30 seconds—it really is 20 seconds—it is not 30 seconds—allows you to do. And I think by broadening it, it allows you to recognize that you protest too much, that you do have an opportunity to explain what you just said and what you have accused someone else of doing.

It stimulates a more solid and rational and less—and a more fair dialogue, and I found that in any indication I have yet to see a two-minute ad in which I was not thoroughly impressed or thoroughly repulsed.

I have seen 30-second ads which were very mean, very superficial, very unfair which I said well, what else could they have done.

Mr. SQUIER. Interestingly enough, Charles and I both came to working in political television from being documentary filmmakers, and I can tell you from experience that the difference between a 30-second spot and a 60-second spot is the difference between making a statement and at least getting the feel of beginning to make a film again. The 60-second, when you get an opportunity to use it, is almost like a feature film. Two minutes is a very interesting time period because you really can discuss an issue and really ventilate an issue in that period of time.

Five minutes you can really begin to talk about the candidate and what the candidate might offer in terms of what are not just issues but personal characteristics. And Charles is the person who invented the half hour film for political candidates, and of course that is—that would be something we would all like to see return.

We have actually returned to doing 60-second spots in the last couple of seasons, much more than we have, say, in the ten years preceding, and I think the reason for that is although we have to pay a terrible penalty for them—it costs literally double the 30-second spot and so that is an incredibly expensive position to buy when you know you are going to give up another position on the spectrum in order to buy that one position, but we have done it because of the reasons that Charles has advanced. You are really able to say a great deal about the subject and something about your candidate as well in that period of time and often say something about both candidates.

I would go back to my original defense of the negative ad. I think the ad that tells candidate A's position and why candidate B disagrees with candidate A in a forthright manner, it seems to me to advance the debate. And if it is done in a way that is truthful and fair, the two standards we believe are essential to good advertising, then I think it is helpful to the process.

Senator DANFORTH. What, if anything, do you think we should do about it?

Mr. SQUIER. About the length?

Senator DANFORTH. Yes. Should we legislate?

Mr. SQUIER. I am not an attorney. I do not know what the law is, but it seems to me if you are working on lowest unit rate again, which we all testified on how many years ago before this same committee—it seems to me that in lowest unit rate you might be able to find a way to give a heavier discount to longer lengths.

In other words, if you want to buy a 30-second spot, then it costs a flat rate. But if you want to buy a 60-second spot, you will get a 20 percent discount on it. If you want to buy a two-minute spot, then you are going to get a 50 percent discount, and that would encourage candidates to use the more responsible lengths of time.

I also think an idea I have testified for before—if you wanted to mix public financing with time made available from stations, it seems to me you could do that and then require the candidates to go to what amounted to free advertising or free use of time in, say, the 30 days before an election. You might use—in order not to do damage to the First Amendment, you might have a situation where you could buy advertising up to 30 days before an election and then mandate by Congress that the time between 30 days before the election and the election be made available by stations to candidates free of charge.

The other advantage of that system is that then it gives you 30 days for everyone to look at the records of where the money came from for all the advertising that went before, and that does not take place after the election takes place before the election.

Senator DANFORTH. Could I ask you, Mr. Gans, to comment on the two issues of accountability and longer ads and how significant do you think they would be in improving things.

Mr. GANS. I am going to talk about longer ads first because I think there are essentially three effective ways of dealing with the phenomenon.

One is the abolition of paid time and the allocation of free time as exists in a number of other democracies. That would handle the problem. The problem with that is twofold, one of which is that you have a political problem with the broadcasters and a substantive problem with allocation, especially in large media markets in which free time should be prime time.

You have 30 or 40 races in a media market with two or more parties, primaries and general election, and you are not talking about meaningful time, so that is a problem.

The second, and I have always been attracted to Charles' suggestion to limited ads of two minutes or more, five minutes or more, something that forces a uniform frame that builds some degree of content into the process.

I think also that it is going to be awfully hard to enact, which is to say that I think broadcasters will come back and say to you "how do we plan our programs." It is a wonderful thing. It gets you away from the captive ads, and it gets you more content, but I think they are going to come back at you and say "how do we plan our programs when we do not know what the lots of time is that we will be selling and that we will be forced to sell." So I think that is a problem.

The third is some modification of what either Senator Hollings and you have already authored or Senator Inouye and Senator Rudman have authored which is essentially some form of uniform format regulations.

I do not believe, even though I think it would be desirable and I would support that a simple amplified disclosure, a frame, voices, large type, five seconds instead of two seconds, will do anything of a serious nature about the phenomena of the competitive phenomena of attack advertising.

I would support it. You always support half a loaf solutions, but I think it is just postponing the problem until tomorrow, which we need to begin to solve today.

Senator INOUYE. Senator Pressler.

Senator PRESSLER. Thank you. I think most of my questions have been asked, but let me ask this. Regarding, Mr. Gans, the nonvoter study, do you have by category the percentages of people who, for example, older people vote, I guess, in much greater numbers. You started to have some of that in one of your paragraphs. Could you give us a breakout, maybe for the record, give the committee a breakout of what is happening? Are older people voting as much as before or are they voting less?

Mr. GANS. Well, let me just give you a short form answer now and then give you some data for the record and personally.

Up until now voter turnout over the last two and a half decades has been declining in every age, income and ethnic category, although not all occupational categories with the exception of blacks which have been increasing their vote until the last election because of the Voting Rights Act, and subsequent mobilization, and older people, 55 to 70 who had maintained a consistently high rate of participation.

What happened in the last election is that the 55 to 70 got narrowed to 65 to 70 and my judgment about that——

Senator **Pressler**. Do you mean they did not decline?

Mr. **Gans**. Everything declined except 65 to 70.

Senator **Pressler**. What percentage of those people vote, 65 to 70?

Mr. **Gans**. In the high 60 percent.

Senator **Pressler**. The high 60 percent. So then when you get into people let us say 18 to 25, what percent?

Mr. **Gans**. 29 percent.

Senator **Pressler**. So, there are almost twice as many. So, if you do a poll, I suppose you would have to weight it. If you do just a general poll and older people support one candidate much more that their people would be much more likely to vote, would they not?

Mr. **Gans**. They are more likely to vote, but in the ages of 65 to 70, they do not have anywhere the same numbers at this point. I mean, there is an attrition.

[The following information was subsequently received for the record:]

Table 1. Reported Voting and Registration, by Single Years of Age and Sex

(November 1988. Numbers in thousands. For meaning of symbols, see text) Civilian noninstitutional population Numbers in thousands

Sex and age	All persons	Reported registered		Reported voted		Reported that they did not vote[1]				
								Not registered		
		Number	Percent	Number	Percent	Total	Registered	Total[2]	Not a U.S. citizen	Do not know and not reported on registration[3]
BOTH SEXES										
Total, 18 years and over	178,098	118,589	66.6	102,224	57.4	75,875	16,365	59,510	9,603	9,021
18 and 19 years	7,295	3,118	42.7	2,346	32.2	4,949	772	4,177	459	639
18 years	3,787	1,599	42.2	1,234	32.6	2,553	365	2,188	205	272
19 years	3,507	1,519	43.3	1,112	31.7	2,396	408	1,988	254	366
20 to 24 years	18,274	9,203	50.4	6,909	37.8	11,366	2,294	9,071	1,313	1,389
20 years	3,448	1,704	49.4	1,224	35.5	2,223	480	1,744	194	329
21 years	3,577	1,681	47.0	1,257	35.1	2,320	424	1,896	273	269
22 years	3,528	1,809	51.3	1,305	37.0	[illegible]	503	1,720	271	281
23 years	3,729	1,894	50.8	1,490	39.9	[illegible]	404	1,836	275	245
24 years	3,992	2,116	53.0	1,633	40.9	2,359	483	1,877	300	295
25 to 29 years	21,210	11,502	54.2	9,259	43.7	11,952	2,244	9,708	1,734	1,174
25 years	4,169	2,227	53.4	1,732	41.5	2,437	494	1,942	316	253
26 years	4,171	2,282	54.7	1,811	43.4	2,359	471	1,889	318	235
27 years	4,391	2,288	52.1	1,816	41.4	2,575	473	2,103	357	248
28 years	4,291	2,322	54.1	1,894	44.1	2,397	428	1,969	435	222
29 years	4,188	2,383	56.9	2,006	47.9	2,183	377	1,805	307	206
30 to 34 years	21,467	13,172	61.4	11,209	52.2	10,258	1,963	8,296	1,544	1,044
30 years	4,436	2,545	57.4	2,132	48.1	2,304	414	1,891	343	235
31 years	4,482	2,742	61.2	2,300	51.3	2,183	442	1,741	336	215
32 years	4,341	2,668	61.5	2,284	52.6	2,057	384	1,672	347	172
33 years	4,162	2,612	62.8	2,224	53.4	1,938	388	1,549	279	201
34 years	4,047	2,604	64.4	2,269	56.1	1,777	335	1,442	238	221
35 to 44 years	35,188	24,392	69.3	21,550	61.2	13,636	2,842	10,794	2,004	1,450
35 years	4,089	2,638	64.5	2,295	56.1	1,793	343	1,451	264	193
36 years	3,880	2,621	67.6	2,335	60.2	1,544	286	1,258	226	147
37 years	3,719	2,559	68.8	2,287	61.5	1,432	272	1,160	212	161
38 years	3,741	2,584	69.1	2,275	60.8	1,466	309	1,157	194	134
39 years	3,564	2,483	69.7	2,191	61.5	1,373	293	1,081	215	128
40 years	3,666	2,569	70.1	2,254	61.5	1,412	315	1,097	212	178
41 years	3,749	2,706	72.2	2,427	64.7	1,322	279	1,043	184	164
42 years	3,238	2,248	69.4	1,961	60.6	1,277	287	990	194	129
43 years	2,773	2,022	72.9	1,772	63.9	1,001	250	751	144	95
44 years	2,768	1,962	70.9	1,753	63.3	1,015	209	806	160	121
45 to 54 years	24,277	17,964	74.0	16,170	66.6	8,107	1,794	6,313	1,210	1,035
45 years	3,036	2,173	71.6	1,965	64.7	1,071	207	864	182	141
46 years	2,872	2,118	73.8	1,837	64.0	1,034	281	754	132	139
47 years	2,492	1,820	73.0	1,640	65.8	853	180	673	118	84
48 years	2,469	1,751	70.9	1,580	64.0	888	171	718	146	114
49 years	2,241	1,680	74.9	1,540	68.7	701	140	562	122	83
50 years	2,509	1,878	74.8	1,696	67.6	813	182	631	124	121
51 years	2,213	1,653	74.7	1,487	67.2	726	166	560	94	90
52 years	2,175	1,623	74.6	1,461	67.2	714	162	552	101	84
53 years	2,302	1,712	74.4	1,551	67.4	750	161	590	102	127
54 years	1,968	1,557	79.1	1,413	71.8	555	145	410	89	51
55 to 64 years	21,585	16,658	77.2	14,964	69.3	6,621	1,694	4,928	762	914
55 years	2,016	1,543	76.6	1,385	68.7	631	158	473	77	130
56 years	2,176	1,649	75.8	1,483	68.2	693	167	526	98	71
57 years	2,143	1,622	75.7	1,451	67.7	692	172	521	75	98
58 years	2,268	1,787	78.8	1,603	70.7	665	184	481	68	87
59 years	2,160	1,649	76.3	1,474	68.2	687	176	511	64	83
60 years	2,277	1,744	76.6	1,577	69.3	699	167	533	91	92
61 years	2,151	1,689	78.5	1,492	69.4	659	197	461	80	85
62 years	2,141	1,606	75.0	1,448	67.6	693	158	536	83	119
63 years	2,151	1,681	78.2	1,516	70.5	634	165	469	87	63
64 years	2,104	1,687	80.2	1,536	73.0	568	151	417	40	88
65 to 74 years	17,578	14,233	81.0	12,840	73.0	4,738	1,393	3,344	334	735
65 years	2,078	1,625	78.2	1,504	72.4	575	121	454	46	114
66 years	1,995	1,638	82.1	1,503	75.3	493	135	358	40	79
67 years	2,046	1,632	79.8	1,454	71.1	591	178	413	52	70
68 years	2,010	1,675	83.3	1,524	75.8	485	151	335	34	79
69 years	1,750	1,436	82.0	1,321	75.5	429	115	314	27	58
70 years	1,768	1,433	81.1	1,278	72.2	491	156	335	24	71
71 years	1,517	1,247	82.2	1,115	73.5	402	132	270	21	75
72 years	1,506	1,210	80.3	1,092	72.5	415	119	296	16	70
73 years	1,481	1,161	78.4	1,034	69.8	448	127	321	55	54
74 years	1,425	1,177	82.6	1,016	71.3	409	160	249	19	66
75 years and over	11,226	8,347	74.4	6,978	62.2	4,248	1,369	2,879	244	642

See footnotes at end of table.

UNPUBLISHED DATA
Bureau of the Census
Department of Commerce
Washington, D.C. 20233

Table 1. Reported Voting and Registration, by Single Years of Age and Sex—Continued

(November 1988. Numbers in thousands. For meaning of symbols, see text) Civilian noninstitutional population

Sex and age	All persons	Reported registered		Reported voted		Reported that they did not vote[1]				
								Not registered		
		Number	Percent	Number	Percent	Total	Registered	Total[2]	Not a U.S. citizen	Do not know and not reported on registration[3]
MALE										
Total, 18 years and over	84,531	55,130	65.2	47,704	56.4	36,826	7,434	29,392	4,791	4,769
18 and 19 years	3,620	1,446	40.0	1,083	29.9	2,537	363	2,173	263	364
18 years	1,871	740	39.5	571	30.5	1,300	169	1,131	117	152
19 years	1,748	706	40.4	512	29.3	1,236	194	1,042	146	212
20 to 24 years	8,868	4,231	47.7	3,178	35.8	5,690	1,052	4,637	739	809
20 years	1,680	786	46.8	569	33.8	1,111	218	894	93	171
21 years	1,753	763	43.5	554	31.6	1,200	209	990	154	169
22 years	1,743	870	49.9	640	36.7	1,103	229	874	165	183
23 years	1,740	849	48.8	661	38.0	1,079	189	891	178	133
24 years	1,951	963	49.3	755	38.7	1,197	208	989	149	153
25 to 29 years	10,398	5,385	51.8	4,285	41.2	6,113	1,099	5,014	869	736
25 years	2,044	1,043	51.0	804	39.3	1,240	238	1,002	147	171
26 years	1,994	1,067	53.5	840	42.1	1,154	227	928	152	124
27 years	2,190	1,100	50.2	875	40.0	1,315	225	1,090	183	161
28 years	2,163	1,112	51.4	891	41.2	1,272	221	1,051	236	142
29 years	2,007	1,063	53.0	875	43.6	1,132	189	943	151	137
30 to 34 years	10,560	6,218	58.9	5,303	50.2	5,257	915	4,343	791	583
30 years	2,141	1,173	54.8	1,004	46.9	1,138	170	968	165	114
31 years	2,235	1,307	58.5	1,090	48.8	1,145	217	928	187	109
32 years	2,157	1,277	59.2	1,092	50.7	1,064	185	879	169	104
33 years	2,040	1,235	60.5	1,040	51.0	1,000	195	806	135	124
34 years	1,987	1,225	61.6	1,077	54.2	910	148	762	135	131
35 to 44 years	17,206	11,509	66.9	10,169	59.1	7,037	1,340	5,697	1,049	756
35 years	1,981	1,232	62.2	1,060	53.5	921	172	749	134	103
36 years	1,829	1,179	64.5	1,042	57.0	786	137	649	142	84
37 years	1,926	1,229	63.8	1,097	57.0	828	132	696	138	93
38 years	1,870	1,250	66.8	1,081	57.8	789	169	620	89	85
39 years	1,713	1,150	67.1	1,031	60.2	682	119	564	105	60
40 years	1,755	1,181	67.3	1,032	58.8	723	149	574	99	87
41 years	1,813	1,288	71.0	1,139	62.9	674	149	525	93	81
42 years	1,581	1,059	67.0	931	58.9	650	128	522	103	50
43 years	1,383	986	71.3	876	63.4	506	109	397	75	56
44 years	1,355	955	70.5	879	64.9	476	77	400	72	58
45 to 54 years	11,765	8,732	74.2	7,833	66.6	3,932	899	3,033	553	555
45 years	1,478	1,070	72.4	968	65.5	511	103	408	76	70
46 years	1,416	1,035	73.1	894	63.1	522	141	381	66	80
47 years	1,202	839	69.8	751	62.5	451	88	363	64	44
48 years	1,197	860	71.9	781	65.2	416	80	337	68	52
49 years	1,081	813	75.2	739	68.3	342	75	268	51	40
50 years	1,223	930	76.0	843	69.0	380	86	293	73	68
51 years	1,033	796	77.1	714	69.2	318	82	236	40	38
52 years	1,093	802	73.4	719	65.8	374	83	291	50	59
53 years	1,073	798	74.4	709	66.1	364	90	274	36	65
54 years	970	789	81.3	716	73.8	254	73	181	29	39
55 to 64 years	10,164	7,869	77.4	7,090	69.8	3,075	779	2,295	320	440
55 years	936	710	75.8	629	67.2	307	81	227	29	59
56 years	1,008	764	75.8	687	68.2	321	77	244	51	31
57 years	1,068	804	75.3	719	67.3	349	85	264	36	55
58 years	1,096	831	75.8	746	68.1	350	85	265	24	48
59 years	1,021	785	76.9	708	69.3	313	77	236	37	32
60 years	1,058	831	78.5	753	71.2	304	77	227	24	46
61 years	1,013	825	81.4	748	73.8	265	77	188	33	42
62 years	996	739	74.3	652	65.5	343	87	256	35	66
63 years	980	775	79.1	697	71.1	283	78	205	31	30
64 years	990	806	81.5	750	75.8	239	56	184	20	33
65 to 74 years	7,805	6,427	82.4	5,854	75.0	1,951	574	1,377	134	351
65 years	925	746	80.6	700	75.7	225	45	180	14	58
66 years	908	738	81.3	680	74.9	228	58	170	21	41
67 years	943	753	79.9	673	71.5	269	80	189	22	32
68 years	934	794	85.0	726	77.7	208	68	140	12	38
69 years	769	649	84.5	590	76.8	179	59	119	3	28
70 years	807	675	83.6	624	77.3	184	52	132	7	33
71 years	712	573	80.5	513	72.0	199	60	139	12	39
72 years	633	514	81.2	479	75.6	155	35	119	11	27
73 years	601	494	82.2	450	74.9	151	44	107	20	24
74 years	573	491	85.8	419	73.1	154	73	82	9	30
75 years and over	4,144	3,321	80.1	2,909	70.2	1,236	412	824	73	196

See footnotes at end of table.

Table 1. Reported Voting and Registration, by Single Years of Age and Sex—Continued

(November 1988. Numbers in thousands. For meaning of symbols, see text)

Sex and age	All persons	Reported registered		Reported voted		Reported that they did not vote[1]				
								Not registered		
		Number	Percent	Number	Percent	Total	Registered	Total[2]	Not a U.S. citizen	Do not know and not reported on registration[3]
FEMALE										
Total, 18 years and over	93,568	63,450	67.8	54,519	58.3	39,048	8,931	30,117	4,813	4,252
18 and 19 years	3,675	1,672	45.5	1,263	34.4	2,412	409	2,003	196	275
18 years	1,916	859	44.8	663	34.6	1,253	196	1,057	88	120
19 years	1,759	813	46.2	599	34.1	1,160	213	946	108	155
20 to 24 years	9,406	4,972	52.9	3,730	39.7	5,676	1,242	4,434	574	600
20 years	1,768	918	51.9	656	37.1	1,112	262	850	101	158
21 years	1,824	918	50.3	703	38.6	1,121	215	906	119	99
22 years	1,785	939	52.6	665	37.3	1,120	274	846	106	118
23 years	1,989	1,044	52.5	829	41.7	1,160	216	945	97	113
24 years	2,041	1,153	56.5	878	43.0	1,163	275	888	151	112
25 to 29 years	10,812	6,117	56.6	4,973	46.0	5,839	1,144	4,694	864	438
25 years	2,124	1,184	55.7	928	43.7	1,197	256	941	169	92
26 years	2,177	1,215	55.8	971	44.6	1,205	244	961	166	111
27 years	2,201	1,188	54.0	940	42.7	1,261	248	1,013	175	86
28 years	2,128	1,210	56.9	1,003	47.1	1,125	207	918	199	80
29 years	2,182	1,320	60.5	1,131	51.8	[illegible]	189	862	156	68
30 to 34 years	10,907	6,954	63.8	5,906	54.1	5,001	1,048	3,953	753	461
30 years	2,295	1,372	59.8	1,128	49.2	1,167	244	923	178	121
31 years	2,248	1,434	63.8	1,210	53.8	1,038	225	813	149	105
32 years	2,184	1,391	63.7	1,192	54.6	992	199	793	178	67
33 years	2,121	1,377	64.9	1,184	55.8	937	194	744	145	77
34 years	2,060	1,379	67.0	1,193	57.9	867	186	680	103	90
35 to 44 years	17,980	12,883	71.6	11,381	63.3	6,599	1,502	5,097	955	695
35 years	2,108	1,406	66.7	1,235	58.6	872	171	702	130	91
36 years	2,051	1,442	70.3	1,293	63.0	758	149	609	85	64
37 years	1,793	1,329	74.1	1,189	66.3	604	140	464	75	67
38 years	1,871	1,334	71.3	1,195	63.8	676	140	537	105	50
39 years	1,851	1,334	72.1	1,160	62.7	691	174	517	110	68
40 years	1,910	1,388	72.6	1,221	63.9	689	166	523	113	91
41 years	1,936	1,418	73.3	1,288	66.5	648	130	518	91	83
42 years	1,657	1,189	71.8	1,030	62.2	627	159	468	91	79
43 years	1,390	1,036	74.5	895	64.4	495	141	354	69	39
44 years	1,413	1,006	71.2	874	61.9	539	132	407	88	62
45 to 54 years	12,512	9,231	73.8	8,337	66.6	4,175	895	3,280	657	480
45 years	1,558	1,102	70.7	998	64.0	561	105	456	106	72
46 years	1,456	1,083	74.4	944	64.8	512	140	372	66	60
47 years	1,290	981	76.0	888	68.8	402	92	310	54	40
48 years	1,272	891	70.0	800	62.9	472	91	381	77	62
49 years	1,160	867	74.7	801	69.1	359	65	294	71	43
50 years	1,286	948	73.7	852	66.3	434	96	338	52	52
51 years	1,180	856	72.6	772	65.4	408	84	324	53	52
52 years	1,082	821	75.9	743	68.6	340	79	261	52	25
53 years	1,229	914	74.3	843	68.6	386	71	315	66	61
54 years	998	769	77.0	696	69.8	301	72	229	60	13
55 to 64 years	11,421	8,789	77.0	7,874	68.9	3,547	914	2,632	443	474
55 years	1,079	833	77.2	756	70.0	324	78	246	48	72
56 years	1,168	885	75.8	795	68.1	372	90	283	47	40
57 years	1,075	819	76.1	732	68.1	343	87	257	39	43
58 years	1,172	956	81.5	857	73.1	316	99	216	44	39
59 years	1,139	864	75.8	766	67.2	374	99	275	27	51
60 years	1,219	914	74.9	824	67.6	395	89	305	66	46
61 years	1,137	864	76.0	744	65.4	393	120	273	47	43
62 years	1,146	856	75.8	796	69.4	350	71	279	48	53
63 years	1,170	906	77.4	819	70.0	351	87	264	56	33
64 years	1,115	881	79.1	786	70.5	329	95	233	19	53
65 to 74 years	9,773	7,806	79.9	6,986	71.5	2,787	820	1,967	200	385
65 years	1,153	879	76.3	803	69.7	350	76	274	32	56
66 years	1,088	900	82.7	823	75.6	265	77	188	18	38
67 years	1,103	879	79.7	781	70.8	322	98	224	30	38
68 years	1,076	881	81.9	799	74.2	277	83	194	21	41
69 years	981	786	80.1	730	74.4	251	56	195	24	30
70 years	961	758	78.9	654	68.0	307	104	203	17	38
71 years	805	674	83.7	602	74.8	203	72	131	9	36
72 years	873	696	79.7	613	70.2	260	83	177	5	43
73 years	880	667	75.7	584	66.3	297	83	214	35	30
74 years	853	686	80.4	598	70.1	255	88	167	10	35
75 years and over	7,082	5,026	71.0	4,069	57.5	3,012	957	2,055	171	446

[1] Includes persons reported as "did not vote," "do not know," and "not reported" on voting.

[2] In addition to those reported as "not registered," total includes those "not a U.S. citizen," and "do not know" and "not reported" on registration.

[3] Includes "do not know" and "not reported" on citizenship.

Senator PRESSLER. There are less voters, you mean.

Now, let me ask you this. Under this legislation—and I might address part of this to the author—but S. 999 provides that you can respond to a negative ad, and I guess that—I cannot tell if there would be a requirement that the response be in person. But then you get into a whole series of things of candidates deciding when to respond to a negative ad.

What is your advice to people on responding to negative ads? I mean, like if this bill passed, S. 999, apparently the candidate would have the opportunity to receive free response time if it is a third party, but apparently the candidate or somebody supporting the candidate would have free response time. What are the ground rules? I mean, some people might not use it, like in the dog ad.

Senator McConnell said there were six weeks there but what would people use for responses that would not also be negative?

Mr. SQUIER. Well, as far as I can tell, the legislation does not require that the response not be negative. So, if it were a client of mine who had been attacked, I would ask for the equal time and then hold it until the last week of the election and then concoct a response in which you dispose of the attack in about five seconds and then just blast the hell out of the other guy with a new attack on him and leave him with that at the end of the campaign with not enough time to respond.

Senator PRESSLER. So, maybe in this legislation we are creating more negative ads by having free response to negative ads, which would be a double layer, although maybe they would be run anyway. But normally do you respond to negative ads?

Mr. SQUIER. If you want to win. I think the problem with Michael Dukakis——

Senator PRESSLER. Obviously you want to win.

Mr. SQUIER. I sometimes doubt that, Senator. The problem Michael Dukakis faced with the Willy Horton ad was not that it was created or that there was anything in it that could not be proven. The fact is he would not respond to it. It took him seven or eight weeks before people were able to convince him that he had to deal with it, and I think there are very few rules in this business, but I am convinced that an attack that is made upon your candidate, your candidacy that seems truthful and fair but is still an attack and goes without response is eventually agreed to.

So, I think unless you deal with an attack by either a counterattack or some kind of answer and then counterattack, you have eventually agreed to it, and I think that would happen in a debate, and that goes back to my own analogy of electronic debates.

If you are standing at two podiums and one of the candidates accused the other of some terrible thing and the camera cut to the second candidate and he just stood there and did not answer, I think everybody after a while would get the impression that he probably agreed to the attack that had just been made upon him.

I think the same thing happens in electronic debates between two opposing candidates when an attack commercial is made. If a response is not made, then eventually that is agreed to.

So, the short answer to your question is I would make the commercial at the very end of the campaign. I would give a quick—I would deal with the attack enough so that we could qualify it, just so that the commercial could qualify and then I would make a counterattack on the opponent.

Senator PRESSLER. Also, if you have any statistics or anybody does on what percentage of Senators who try to get reelected get reelected, and maybe that is a known thing where I have seen these House members but have not really seen a percentage of Senators who do not retire who try to get reelected.

Does anybody have any percentage?

Mr. SQUIER. We only keep statistics on our company, and they are very high in our company.

The CHAIRMAN. I will give it 56 percent since 1980 it is only—the only figure right now where a study has been made.

Senator PRESSLER. That is only slightly over half, then.

The CHAIRMAN. Yes. About half of them are replaced since 1980, but, Bob, I do not want a part of your answer. I do not want the record to reflect that Bob Squier came and said this bill would promote negative ads.

Is it not a fact from your experience—and, Charles, you, too, Mr. Gans and others—that broadcasters do not want to carry these ads in the first place? Now, they do not have to accept the independent committee ads, so they can reject them out of hand and the probability is, in my opinion, they would not take any of them and get along to either charging more or giving the free time.

Yes, they are required to give access to the candidates, but if this bill passes, they are not required to give time to candidates where the candidate does not appear in the ad and refers to an opponent. Broadcasters are unlikely to refuse to take advertisements with the candidate himself. I mean, they in a sense broadcasters sort of like it because it gets rid of—unless they are going to be responsible a lot of political ads that are run—just hit and run, bam, bam, bam.

In other words, you are not going to be giving that free time. He is going to say fine, let us just not even run it because it refers indirectly to the opponent, and I am not going to have to run that, and let us go ahead with our regular program and regular ads and we will get more money for them and we will not get involved.

Am I wrong on that reaction, Mr. Squier?

Mr. SQUIER. My experience is that broadcasters will run just about any ad they can as long as you pay for it. And they are not looking for opportunities to throw political advertising or any other advertising off the air.

They will, however, respond to a situation where they feel that they are going to have to give away time someplace else or whether they are going to get in trouble in some way that would cause them trouble with their license, and so that is where you get into the argument. You get in the argument on these gray areas. Was it an attack or was it not? What is an endorsement?

As you were talking about endorsements it occurs to me you could have someone say wonderful things about a candidate and stop short of endorsement. It would sound like a marriage proposal, but it would not be an endorsement and yet it would not qualify as an endorsement under the law because the word was not used or they did not actually do the active political endorsement.

The CHAIRMAN. Right. But, I mean, this comes in around September or October after Labor Day, the advertising period in your business, and they have got plenty of ads coming from the automobiles and everything else of that kind. I found talking to broadcasters during politics time, they would prefer not to fool with political ads.

Mr. SQUIER. They would like you to believe that.

The CHAIRMAN. Mr. Gans.

Mr. GANS. There are occasions where broadcasters do reject ads in campaigns, but by and large when I was trying to explore various approaches to regulation or dealing with the phenomenon. I found that what they do not want to do is to be forced to intervene to be an agent. That, by the way, probably strengthens your case against some of the specifics of this particular legislation without necessarily strengthening the case against the general premise.

As far as large broadcasters are concerned they would much prefer to sell commercial time. So long as it does not involve them, they are willing to see some form of political advertising regulations. They do not want to get intó the grant of equal time. They do not want to get into prepublications censorship.

There is, if I can tell one small story of a very reputable Republican Washington campaign firm who was hired by the Republican minority in the Michigan state legislature. They created an ad which showed two rhinoceroses in conjugal relations with the voice over saying "Guess what the Lansing Zoo is doing to you." That ad did not make it, and so there are times that they do get on the air.

The CHAIRMAN. Mr. Lynn, I think this issue does raise why I called this a kind of censorship of political advertisements. I know there are more aphorisms in South Carolina than I ever heard in Pennsylvania, but I do remember my father once saying that you can call a rat a Chihuahua, but it does not make it a dog, and you can call a lot of regulation of content and style something other than censorship, but I think it is censorship if it has the effect of discouraging people from speaking, and I do believe that this approach would discourage, among other things, political action committees from going and trying to purchase time because they know, number one, it might not be acceptable because the broadcaster will have to give equal time to the opponents.

Number two, that they are going to end up with a wash if that happens because their message will be counterbalanced by a free message opposing their own message, and that is the impact and that is why I use the term that is harsh censorship because I think the overall action of this legislation is to discourage the very robust debate we may or may not have but which we certainly should have in the political system.

The CHAIRMAN. It discourages the anonymous speech, but go ahead. We will not argue that. I hope, Mr. Gans, you will come in too with your idea on how to defend accountability.

Thank you, Mr. Chairman.

Senator INOUYE. Gentlemen, I thank you very much. It has been a long day, and we are most grateful for this as we say robust exchange of ideas. It will be very helpful to us, and I hope that you will assist us as suggested by Senator Danforth and Senator Hollings in bringing forth your suggestions as to how to overcome constitutional problems and still take the first though small step. Thank you very much.

Our final witness is the President of Common Cause, Mr. Fred Wertheimer. Thank you very much for your patience in waiting to testify. I would like to state that all prepared statements will be made a part of the record.

STATEMENT OF FRED WERTHEIMER, PRESIDENT, COMMON CAUSE

Mr. WERTHEIMER. Thank you, Mr. Chairman for this opportunity. I will make my remarks brief.

I would like to make a couple of general comments. Part of the discussion this morning has gone back and forth on the question of the need for comprehensive campaign finance reform legislation. We very much believe that comprehensive legislation is essential, that somehow some way the House and Senate have to get a handle on the extraordinary money chase that goes on in the process today.

We believe the distribution of resources is highly tilted towards incumbents, so that we do not think this process from a financial standpoint is fair to challengers. We also think that too much time and energy is spent on having to raise money, particularly in the Senate, and we think it is essential to have spending limit as part of any overall reform campaign. Therefore, we very much disagree with the view presented earlier by Senator McConnell that you can reach some form of bipartisan agreement if you just forget about spending limits, because you will be losing one of the critical aspects of solving this problem.

We do not believe the country can afford for you to do anything other than keep working hard to bring about real reform, and we urge you and the Senate to do that. We very much want to see a bipartisan compromise and a consensus reached here. We have argued that that requires everyone to put all issues on the table, but we do not accept the notion that you simply can drop central aspects of how you solve this problem, come forward with a compromise on proposals that will not solve the problem and end up with a solution.

Halfway measures will not solve the problem, and they will only make a cynical public more cynical.

I do want to make one other point for the record. Senator Pressler did raise the role of $100,000 contributions in presidential campaigns and mentioned that they had come about as part of earlier reforms. That is not our view. Our sense is that those contributions, in fact, were illegally made in the 1988 presidential campaign to both presidential candidates, that they violate the presidential campaign finance law, that the Federal Elections Commission by refusing to properly interpret the law opened this area to abuse, and that the abuse has occurred in great order and must be remedied now.

There is a Federal District Court opinion outstanding going back to 1987 that ordered the Federal Elections Commission to address the soft money problem. Two years has passed and the commission still has failed to comply with the court order.

I would like to focus my remarks today on the independent expenditure aspects of S. 999. We very much support the response-time proposal. We think it correctly deals with questions of inequity in elections today and the need for accountability.

The Supreme Court has spoken on the inability to limit independent expenditures. What this bill does in our view is create a method and a way for candidates to have an opportunity to respond to very large, unexpected independent expenditures in their campaigns.

Senator Danforth and Senator Hollings have both addressed this in previous testimony and statements, I think, very accurately. If you have candidates planning to run a campaign and then a third or fourth party comes in with a very huge sum of money, if you are going to have an equitable political process, there needs to be a way for candidates to be able to answer or to respond.

The independent group does have the right to make its voice heard, but that group is not going to be held accountable at the polls. It can speak in whatever way it wants, but it does not face the accountability at the poll that the candidate ultimately does.

Now, there was a lot of discussion at the time of the Supreme Court decision in *Buckley* v. *Valeo* about the need to allow independent expenditures so individuals, local groups, whatever, to take out an ad in a local campaign, in a local community, to be free to express their personal point of view. That was a part of the thrust underlying the final result.

What the record shows us is a great bulk of these independent expenditures, in fact, are being made by the same PACs that are making campaign contributions.

These are organizations that are making contributions that are limited, that are also making the independent expenditures that are unlimited, and that was one of the great concerns at the time that led to limiting independent expenditures, a sense that if you did not have such a limit, there would be evasion of the contribution limits.

I think the history to date since the Federal Election Campaign Act was enacted shows us that independent expenditures are being used as a different form of campaign contribution for or against candidates, I think what this bill has done is come up with a fair and credible and constructive way to balance the fact that the court has made very clear that independent expenditures, if they are truly independent, are an expression of speech and, therefore, cannot be limited regardless of the kind of imbalance and unaccountability that those expenditures can cause in a political campaign.

We also support the notion of continuous disclaimer during independent expenditures and in general support the larger notion that you have talked about today of holding these communications accountable.

We have supported other forms of dealing with independent expenditures including clearer definitions of when expenditures are actually independent and are not independent.

We do believe that a comprehensive bill is required.

We think that the response time approach to independent expenditures is a crucial element of a comprehensive campaign finance reform package and is important and necessary to deal with a significant problem that exists today inside the political process and the way in which candidates are able to deal with and respond to this problem.

Thank you very much.

[The statement follows:]

TESTIMONY OF FRED WERTHEIMER

PRESIDENT

COMMON CAUSE

Mr. Chairman and Members of the Committee, I appreciate the opportunity to testify today on behalf of Common Cause. I would like to focus my comments on the issue of independent expenditures and the provision of S. 999, the Clean Campaign Act of 1989, that would entitle federal candidates to free, equal broadcast response time to radio or television advertisements paid for through independent expenditures which oppose the candidate or support his or her opponent.

We believe that independent expenditures -- money spent in a federal campaign by individuals or groups ostensibly unaffiliated with the candidates, but targeted to elect or defeat one of the candidates -- can serve to seriously undermine the fair competition in the electoral process that is crucial to representative government.

When outside entities spend large sums of money in a federal election campaign, candidates must compete not only against the resources of their opponents, but also against the resources of the independent groups. The effect, as Senator Hollings has observed, is that "a candidate budgets to fight one well-financed opponent but then ends up fighting many."

The unlimited and often unaccountable nature of independent expenditures serves to undermine a healthy political process. Particularly troubling is the compelling evidence that the very same special interests which use political action committee (PAC) contributions to influence Congress on legislative matters are using independent expenditures to inject into elections even more influence money than they are allowed to by the PAC contribution system.

The Supreme Court has struck down direct limits on independent expenditures. Nevertheless, we believe there are ways for Congress to remedy the electoral imbalances and inequities brought by independent expenditures and make these outside influences more accountable.

Common Cause long has supported measures to provide either broadcast response time or public campaign funds to candidates targeted by, or whose opponents are supported by, broadcast advertisements funded by independent expenditures. By giving candidates disadvantaged by independent expenditures an opportunity to respond, these measures would help restore the competitive balance upset by independent expenditures. We welcome the leadership of Senators Hollings, Danforth, Inouye and Bryan in this area.

We also have urged that public campaign funds should be made available to candidates to respond to non-broadcast independent expenditures. In addition, we support accountability measures to ensure that the independent individual or group funding a broadcast campaign advertisement is clearly identified by the ad.

We also urge Congress to establish clear guidelines for independent expenditures to ensure that they are truly independent and are not made in coordination with a candidate or campaign.

The Committee's focus on troublesome areas in current campaign practices comes at a crucial time, when congressional leaders have made campaign finance reform a legislative priority of the 101st Congress, and President Bush's involvement in the issue has brought it increased national attention. Clearly, the current congressional campaign financing system is not serving the public's interest in fair, competitive elections or a government that is free from the taint and pull of influence money supplied by private interests. The time and the opportunity for Congress to overhaul the campaign financing system is here, and the Committee can make a crucial contribution to this overall effort.

To be effective, Congress' approach to campaign finance reform legislation must be comprehensive. We believe that comprehensive reform includes measures to dramatically reduce the role of PACs, curb the explosion in campaign spending, provide alternative public resources for congressional campaigns, and shut down the soft money system, through which tens of millions of dollars in illegal "fat cat" private contributions were injected into the 1988 presidential campaign.

In addition, we support measures to address other serious problems that serve to distort fair electoral competition, such as independent expenditures, the use of the congressional franking privilege for mass mailings, and bundling by PACs and political parties to evade contribution limits.

We recognize that formal legislative jurisdiction over changes in federal election law -- as distinct from federal communications law -- does not rest with this Committee. We urge the Committee to support the response-time provision of S. 999 in order to promote fairness in the federal election process. We further urge Committee members to support enactment of comprehensive campaign finance reform legislation this year.

The Problem with Independent Expenditures

A major focus on campaign finance reform today centers on the role of special interest money in elections and how the current system's growing dependence on PAC contributions, which go predominately to incumbents, has undermined electoral competition and the integrity of legislative decision-making. Independent expenditures are raising the same kinds of problems.

Independent expenditures, like PAC money, have not been evenly distributed in elections. Often one candidate in an election is the overwhelming target -- or beneficiary -- of the outside expenditures.

During the 1987-88 election, for example, independent expenditures favored Senator Chic Hecht (R-NV) over his opponent, Governor Richard Bryan, by a ratio of 40-to-1. As the top congressional beneficiary of independent expenditures during that election, Senator Hecht had $754,560 spent in his favor ($731,110 on his behalf and $23,450 against Bryan), while Governor Bryan had $18,957 spent in his favor ($8,256 on his behalf and $10,701 against Senator Hecht). Similarly, Representative Trent Lott

(R-MS) had $717,180 spent independently to advance his Senate campaign; no independent expenditures were made against him or in support of his opponent, Representative Wayne Dowdy (D-MS).

Second, independent expenditures, like PAC money, have heavily favored incumbents over challengers. During the 1987-88 election cycle, for example, independent groups and individuals spent $3.9 million on behalf of House and Senate incumbents, but only $536,608 on behalf of challengers, an 7-to-1 ratio, according to the Federal Election Commission (FEC). Independent expenditures appear to favor congressional incumbents for the same reason PAC money does: incumbents under the current system stand a far better chance of winning and, as such, are in a position to be influential. In 1987-88, for example, beneficiaries of the $1.3 million in independent expenditures made by the Realtors PAC included seven congressional candidates, six of them incumbents. Among these, the Realtors PAC spent $228,038 in support of Senator John Melcher (D-MT); $155,312 in support of Representative Ben Nighthorse Campbell (D-CO); $155,287 in support of Representative James Hansen (R-UT), and $152,600 in support of Representative Bill Emerson (R-MO), according to the FEC.

Referring to the six incumbents the Realtors PAC supported, Doug Thompson, the PAC's director of political programs, explained in Congressional Quarterly, "Those were six votes we wanted to make sure we still had around after the election." As Congressional Quarterly noted, "In the rawest sense, independent spending can be a high-powered play for political influence, an attempt to shape at least a small part of Congress to the PAC's liking."

In fact, a large proportion of independent expenditures involved in elections today are not made by local entities and groups expressing their views. Rather, independent spenders often are the same special interests that use PAC contributions to influence government. Among the top 10 committees making the largest independent expenditures in 1987-88 were a number of special interests that also make large PAC contributions on Capitol Hill. The National Rifle Association (NRA) Political Victory Fund made $1.5 million in independent expenditures; the Auto Dealers and Drivers for Free Trade made $1.4 million; and the Realtors PAC made $1.3 million.

When large independent expenditures are being made by the very same special interests making PAC campaign contributions to influence Congress, it becomes difficult to argue that independent expenditures are not being made for the same purpose -- to influence congressional decisions.

Indeed, through independent spending, special interests can play a larger role in congressional elections than they can through PAC contributions. Under federal law, a PAC may contribute no more than $5,000 to a federal candidate per primary or general election. Through independent expenditures, however, PACs and other special interests can spend unlimited sums on the candidates they favor or oppose. This seriously undermines the legal limits on private campaign contributions.

"A PAC can spend as much as it wants in this way, as long as it acts on its own and does not communicate with the campaign," The New York Times noted. For example, according to the FEC, the

American Medical Association (AMA) PAC made independent expenditures of more than $134,527 on behalf of the 1988 campaign of Senator David Durenberger (R-MN), the ranking member of the Senate Finance Committee's Medicare and Long Term Care Subcommittee, which has jurisdiction over doctors' Medicare reimbursement rates. According to the FEC, the AMA PAC made $825,705 in independent expenditures during the 1987-88 election season on top of the more than $2 million in direct contributions the group made to candidates during the election.

Third, independent expenditures, like PAC money, also feed the campaign spending frenzy that characterizes congressional campaigns under the current financing system. The fear of the possible intervention in a particular race by one of these independent spenders is one of the reasons cited by incumbents for increasingly building up huge campaign warchests, a factor which only escalates the campaign spending race which is already dangerously out of control. Independent expenditures, as Senator Hollings said in The New York Times, "exacerbates this campaign spending nonsense."

Finally, independent expenditures contribute to the "attack" approach to campaign advertising that is increasingly common in the modern political campaign. During the 1988 election season, some $4.7 million in independent expenditures were targeted against federal candidates, according to the FEC -- $1.2 million to defeat congressional candidates, and $3.5 million to defeat presidential candidates. Some clearly prefer targeting candidates for defeat rather than supporting candidates for victory -- for example, about 99 percent of the $1.5 million spent independently by the NRA Political Victory Fund in 1987-88 was targeted against federal candidates.

As Senator Danforth aptly stated, "We have always had negative campaigns. But the use of the electronic media, and the development of the independent political ad have exacerbated the problem." When a candidate attacks his or her opponent during the course of a campaign, he or she can be held accountable for the attack on election day. Independent expenditure groups are far less accountable. These groups do not have to provide voters with constructive policy alternatives and do not have to assume any responsibility at the ballot box for the consequences of their actions. Instead, they can simply attack -- without responsibility to party or candidate or voter. In many cases, it is not even clear exactly who is responsible for the attack. "In theory," Senator Boren said, "these groups are acting independently, without the knowledge or planning of the candidate. Tiny disclaimers at the end of such TV ads show the real source of the advertisements, but they appear briefly and are difficult to read."

Remedies for Independent Expenditures

The 1974 amendments to the Federal Election Campaign Act included a provision establishing a $1,000 limit on independent expenditures by an individual or group in an election. In enacting this limitation, Congress sought to prevent evasion of the Act's contribution limits under the guise of an independent expenditure effort. However, the Supreme Court held in its 1976 decision in Buckley v. Valeo that this provision was an unconstitutional violation of First Amendment rights. The Court's decision in a later case (Federal Election Commission v. National Conservative Political Action Committee) struck down a more narrowly drawn provision which restricted independent expenditures in publicly financed presidential campaigns.

Within the confines of these decisions, however, there are critical steps which Congress can and should take to address the problem of independent expenditures by offsetting their harmful effects, steps which pass constitutional muster.

First, we believe candidates disadvantaged by independent expenditures should be entitled to free broadcast time to respond to broadcast advertisements, or as an alternative, public funding to respond to broadcast or non-broadcast campaign activities. Providing federal candidates with free broadcast time to respond to radio or television advertisements funded by independent expenditures, as proposed in S. 999, would, as Senator Danforth has said, help to "restore balance into a campaign in which independent ads are aired" and "give candidates some ability to respond to a message that otherwise might be unanswerable."

Under the response-time proposal in S. 999, radio and television stations would be required to provide free and equal time to candidates for federal office in cases where a broadcaster sells time to any person -- aside from federal candidates -- to broadcast material that either supports or opposes a candidate. If the broadcast advertisement opposes a candidate, that candidate would be entitled to an equal amount of broadcast time at no cost. If the broadcast advertisement supports a candidate, other legally qualified candidates for the same office would be entitled to an equal amount of broadcast time at no cost. An individual or group making an independent expenditure should be required to certify, under penalty of perjury, which candidate the individual or group is actually trying to benefit.

As an alternative, we also have supported measures to provide public funds to candidates who agree to spending limits if independent expenditures totalling more than $10,000 are made in opposition to a participating candidate or in support of his or her opponent. The public funds would be available to compensate for both broadcast advertisements and non-broadcast campaign activities. Such a provision is included in campaign finance legislation introduced in this Congress by Senators Mitchell, Boren and Byrd (S. 137). Providing public funds for this purpose "is similar to other laws that provide financial assistance to the exercise of free speech, such as aid to public broadcasting and other forms of educational media," as the Committee on Rules and Administration has described such a provision.

Provision for free broadcast time or public funds to respond to independent expenditures would enable candidates to refute misrepresentations or other points made by independent spenders and, as such, would provide some measure of accountability in independent spending activities.

Second, the identity of the group or individual purchasing the independent expenditure television advertisements should be made clear to voters by requiring the ads to run a continuous, plainly legible identification of the individual or group making the expenditure, including the name of the sponsoring organization of any PAC. Direct mailings also would have to clearly disclose who paid for them. This approach, which also is included in S. 137, would help to reduce voter confusion as to whether such messages may be from candidates themselves, and thus improve accountability.

Third, the Buckley decision specified that independent expenditure activities are exempt from limitation only if they are not coordinated with candidates or the agents of candidates. Additional legislation should be enacted to provide more detailed guidelines to ensure that independent expenditures truly are independent of the benefiting candidate. This approach also is a component provision of S. 137 as well as campaign finance legislation sponsored by Senator Dole (S. 7).

We believe these measures would provide positive and important steps in dealing with the independent expenditure problem in particular and, in general, the need for fundamental reform in the campaign financing system. We strongly urge this Committee to support the response-time provision of S. 999.

Conclusion

The current congressional campaign financing system no longer serves our political process. President Bush, and Democratic and Republican leaders in both houses of Congress, have called for reform. It is clear that we must have comprehensive reform, including measures to deal with the staggering amount of influence money flooding federal election campaigns, the spiralling spending in congressional elections, the overwhelming advantage of congressional incumbents over challengers, and other serious problems such as independent expenditures.

Members of this Committee can play an important role in helping to bring about the needed campaign finance reforms by favorably reporting the response-time provision of S. 999. We also urge members of the Committee to support comprehensive campaign finance reform legislation.

We want to express again our appreciation to this Committee for holding these hearings, and we stand ready to work with you on this and related matters.

Senator INOUYE. Thank you very much, Mr. Wertheimer.

Senator Hollings.

The CHAIRMAN. Mr. Wertheimer, why—and that is a very persuasive statement, and we appreciate it relative to the independent committee and accountability—that same persuasion as to accountability, I take it, in your mind does not apply to the candidates themselves. Or, if that is the case, why not?

Mr. WERTHEIMER. Well, we have not taken a position on the other aspect of this bill, Senator Hollings, nor did we when we testified here last time on this same subject.

I did point out then and I would point out again now that on the one hand, we are sympathetic to the concerns that motivate this legislation, the impact.

The CHAIRMAN. Would you want to give your individual opinion?

Mr. WERTHEIMER. I will give you my individual opinion at this point, and it is this: On the one hand, sympathy to what is motivating this legislation, the concern about the role that short television ads play—a dominating role—in the political process and in the campaign process, and concern about the impact of their negative aspects, even though apparently they work. Consultants say that, and campaign operatives seem to think it.

But, even if they do work, they have quite a lingering effect on our society. They become the single overriding way in which people find out and hear about what you all do and what government does, and they are the most intensive, powerful way of communicating what government in our society is about and what you as elected officials are about, and they have a very powerful impact.

And it is a cause, I think, for very serious concern, the role in which T.V. advertising is playing in our campaigns.

I also worry about the other concerns that have been raised. We can talk about negative ads. We can also talk about an opponent's positions, point of view.

Now, that is not by definition a negative thing in a campaign, to campaign against what your opponent stands for and to say what you stand for. That is not by definition negative, although it becomes very magnified on television.

I think we get a lot more discussion about where people stand from challengers talking about incumbents than you do with incumbents talking about challengers in part because incumbents are better known and they are not particularly interested in increasing the reach of their challengers.

It is kind of a natural act of the process, but in that process you are going to wind up with challengers. I am much more interested in talking about the records of incumbents. And, by definition, that will bring them into this process of having to be in the middle and appear in their ads.

It becomes the place where we define how a campaign should be conducted. We tend not to do that. This would be a central place where we do it. It also may well make it harder for challengers to compete with incumbents, and so I worry about that.

On the other hand, I think the question of accountability is important, as it pertains to independent expenditures. I think the public has no idea who is behind them.

So I think disclosure is very important. I think the issue of the length of the ads might really take on the question of how the ads are being used in our society today. I just wind up mixed on it. Part of me is very sympathetic to what you are trying to do, but I worry that it does come down too hard on challengers.

The CHAIRMAN. I would take advantage of this, and I apologize to Senator Danforth and Senator Inouye, our chairman, for taking advantage, but you have been strong against PACs. I have been strong against the *Buckley-Valleo* decision because it is defective in my opinion because it does not promote an equitable political process. In *Buckley* v. *Valleo,* they equated money and politics with speech.

But those who have it and spend it on their own have unlimited speech or more particularly effective in the sense that since it has been equated that way. Let us say you have got $50,000 and I have got $1 million, I can veritably take away your freedom because I fill up those 30-second ads with all kinds of charges, innuendoes, half-truths and everything else of that kind. Because you cannot afford to respond, your family will think that you are disinterested in your own campaign, that you are not answering, you are not coming forward.

In other words, I have gone right to the heart of a constitutional amendment. You, in turn, are really strong against political action committees.

Mr. Wertheimer, do you really think these entities will disband and disappear? It has always been my feeling from the experience we had leading up to 1973, that we brought the whole thing into the open, into the public, out of the closet.

Prior to that time, as you remember, the large contributions we had up here in Washington, you had to either give so much or you were not going to get paid by the government.

There were different people charged on that score. I know down in my own back yard the textile folks were told that the President was not even going to look at the bill unless each of them came up with $35,000. They did not before and they have not now given $35,000.

Do you think the education association, the AMA, the labor unions, the entity is going to disappear? I mean, what we are going to do if we did away with PACs, as you insist we must do, we put them back into the dark or what I would call or somebody will the backer friend and say well, you know, the best depositors.

I will allot $100,000 to you and you get ten of your best depositors at $10,000 apiece, and then we are going back into the closet. In other words, we do not know who is really responsible for that wonderful support. The names are listed $100 contributions.

But I do not see PAC's or other entities disappearing. They will still solicit and as a result of that, we are going to have to just really get to a limitation, and I know no other way to do it other than the constitutional amendment.

Mr. WERTHEIMER. Well, Senator, our position has been to dramatically reduce the role of PACs. We have focused on cutting back the amounts that they can give and that candidates can accept.

We believe that is part of the solution, but we also very strongly support spending limits.

We filed a brief in the Buckley case in which we supported the constitutionality of spending limits. The court ruled against us.

We support spending limits. Our view is that that should be done by statute, and that is the approach we have taken.

The CHAIRMAN. But how does the PAC disappear? Whether I have got automobile dealers, whether I have got doctors, whether I have got teachers.

Mr. WERTHEIMER. I do not expect it to disappear.

The CHAIRMAN. They will also list the money that will come up, and they will not have the name AFL-CIO, number so and so and so and so with the plumbers' union. On the contrary, you just get so much from so many plumbers. That is the way they collect it now.

Mr. WERTHEIMER. We want to cut back on the amounts that PACs can give. We want to find a way that you can finance your campaigns without having to be dependent on a group or an individual for the money.

The CHAIRMAN. But, Mr. Wertheimer, what I am saying is that the plumbers' union is now limited, let us say—what is it, $1,000 or $5,000 as an entity?

Mr. WERTHEIMER. $5,000.

The CHAIRMAN. They could give $50,000 if we do away with the PAC. What I am saying, by having the PAC, I have made them accountable, and I have established the limit. But I can go to that same doctor group that is giving AMA only $5,000, and I can get that many doctors to come in and give $50,000 or $100,000 under your doing away with the PAC.

Mr. WERTHEIMER. Senator Hollings, I suggest you have this conversation with President Bush. He is the one who has proposed to do away with the PAC.

Our position to date has been to cut the amount that the PACs can have and cut the amount that you can receive from the PACs.

That was the approach in S. 2 in the last Congress. That is the position we have taken to date.

The **Chairman**. Very good. Thank you, Mr. Chairman.

Senator **Inouye**. This has been a fine day. I have learned a lot. I thought I knew most of the answers, but obviously I do not.

Mr. Wertheimer, I thank you very much. We will now stand in adjournment, and I can assure you that this measure will be taken up by the full committee hopefully soon.

[Whereupon at 1:00 p.m., the committee adjourned, subject to the call of the chair.]

○